

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

IN RE: : Civil Action No.
KBR, INCORPORATED, : RWT 09-2083
BURN PIT LITIGATION, : Greenbelt, Maryland
Defendant. : Thursday, March 9, 2017
/ 1:10 P.M.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ROGER W. TITUS
UNITED STATES DISTRICT JUDGE

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I-N-D-E-X

WITNESSES

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>On behalf of the Defense:</u>				
John Vines				
(By Mr. Johnson)	3			
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Mike Mayo				
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P-R-O-C-E-E-D-I-N-G

THE COURT: You may proceed. Call your next witness.

MR. JOHNSON: Your Honor, KBR calls Lieutenant General John Vines, United States Army retired.

JOHN VINES, DEFENSE WITNESS, SWORN

THE DEPUTY CLERK: Please have a seat on the witness stand.

Sir, please speak directly into the microphone, state your name and please spell your first and last names.

THE WITNESS: John Randolph Vines.

THE DEPUTY CLERK: Please spell your first and last name.

THE WITNESS: J-O-H-N, V-I-N-E-S.

THE DEPUTY CLERK: Thank you.

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Good afternoon, General Vines. How are you today?

A Very good, thank you.

Q Sir, before we get started with some of the substance of your testimony, could you please provide the Court with a brief overview of your military career?

A I served 35 and-a-half years active duty primarily in the combat arms. Was commissioned in 1971, retired in 2007 and served in Iraq, Afghanistan, Somalia, Desert Shield Storm, Panama and assorted other places.

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1 Q Sir, when could you serve in Iraq?

2 A The first time was in Desert Shield Storm in 1991, ended up
3 there. But in -- as a Multi-National Core Iraq Commander, it
4 was January, 2005 until January, 2006.

5 Q And you just stated you were the commanding general of the
6 Multi-National Core Iraq. What was the Multi-National Core
7 Iraq?

8 A It was comprised of 27 different nations, about 175,000
9 soldiers, sailors and Marines. Most airmen were assigned to
10 another component. Basically, all the combat forces in Iraq
11 were under my control. There was a Multi-National Force Iraq,
12 which was a four-star command that I reported to.

13 Q What was the mission of MNCI?

14 A At the time when we took over, it was to develop capacity
15 of the Iraqi military and security forces, both their army and
16 their Ministry of Interior forces, police, border police and so
17 forth. And develop capacity in the other ministries so that we
18 could transition to the Iraqi forces in the lead and begin to
19 draw down U.S. presence.

20 Q How much of a draw down when you first took command, how
21 much of a draw down were you instructed to make?

22 A It was projected over the year that we were there that the
23 draw down would be about 40 percent of the overall force.

24 Q 40 percent of that 175,000?

25 A Correct.

JOHN VINES - DIRECT EXAMINATION

1 Q Now, General Vines, I want to put up a map to sort of help
2 us in this discussion. When did you, when did you arrive in
3 Iraq to be a commanding general of the Multi-National Core Iraq?

4 A When?

5 Q Yes, sir.

6 A It was approximately in January, 2005.

7 Q And can you tell the Court what was happening with the
8 transitional government at that time when you took command?

9 A There was an election that was taking place at that time.
10 And it was boycotting in large measure by the Sunni population.
11 So the government that was elected was representing primarily
12 Shia electorates which had secondary effects later.

13 So the election took place in January of 2005 and sworn in
14 in late March of 2005.

15 Q Okay. And why was that significant, if it was, to MNCI's
16 mission?

17 A Because we didn't have the support of a large portion of
18 the population, the Sunni population, which felt like it was
19 Shia dominated government, and there was significant resistance
20 from the population, both the average citizen and people who had
21 been a part of the government previously.

22 Q Sir, I want to just take a step back and think about your
23 position. Can you describe at a high level what your
24 responsibilities were as the commanding general of MNCI?

25 A It was the responsibility of coordinating all combat

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1 operations as well as combat support, meaning supporting
2 training missions for the Iraqi police, the Iraqi Army, the
3 Iraqi Border Patrol, Highway Patrol. And so we provided
4 individuals to help train them. And we also had presence in
5 some of the prisons and the detention facilities to ensure that
6 prisoners were treated humanely.

7 We had presence in the Ministry of Interior, Justice,
8 Treasury and Defense to help develop their capacity so they
9 could run their own government.

10 Q Sir, where were you personally headquartered?

11 A It was called Camp Victory. It was near the Baghdad
12 International Airport, part of the Victory Base Complex.

13 Q Is that the BIAP acronym?

14 A That is correct.

15 Q How often, if you did, did you leave the Victory Base
16 Complex to drive around Iraq?

17 A Either five or six days a week. So pretty much every day I
18 visited multiple locations throughout the country.

19 Q Why did you travel so much?

20 A Well, to get an understanding of the -- what effects we
21 were achieving, to talk to our counterparts. We had coalition
22 partners from some of the other countries, to find out what
23 their concerns were. To talk to the Iraqi counterparts we were
24 cooperating with, whether it was combat operation or training;
25 to talk with U.S. commanders to determine whether or not they

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1 had the resources that they needed. And I spent a fair amount
2 of time talking to our soldiers there to get a second point of
3 view. We had direct reporting chains that I got information
4 from, but they will give you their perspective of what was going
5 well and not so well in whatever location you visited.

6 Q What is an example, something that one of the soldiers
7 would tell you when you went on these battlefield tours?

8 A If there was not enough electricity for 24-hour operations,
9 if there was not enough -- if water was rationed, if the quality
10 of food wasn't good, if the dining facilities were unclean, if
11 latrines were not up to standard; living conditions, not enough
12 air conditioning, ran the gambit, anything that they felt they
13 needed. And a fair amount was what their relationship was with
14 their host nation counterparts.

15 Q Sir, I want to turn back and talk a little bit more about
16 the operational environment during your years as Commanding
17 General. Are you familiar with the Battle of Abu Ghraib?

18 A I am.

19 Q And what was the Battle of Abu Ghraib?

20 A Well, there was -- Abu Ghraib was co-located with a
21 prisoner by that name. And it was on a boundary between two
22 districts. One was the U.S. Marine Core, which we were
23 responsible for and another was our forces located in Baghdad,
24 so it was our boundary. So there was a pretty significant
25 conflict that took place there.

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1 Violence was on the upswing. We were seeing a lot of
2 suicide attacks, not so much by Iraqi citizens, but by
3 third-country nationals that were infiltrating in from the west.
4 So we'd seen a lot of attacks by suicide bombers. And that was,
5 that was a primary entry point into the Baghdad zone.

6 Q How would you describe the environment in April of 2005?

7 A I had spent several years in combat over my career and this
8 was the most violent period I had ever experienced. It was
9 violence every day. We were losing on average two and sometimes
10 three U.S. soldiers a day to attacks, killed in addition to
11 wounded.

12 Q How did that compare to the earlier months and years of the
13 war?

14 A It was at the highest level since the invasion. So -- and
15 it continued to go up over the next year and-a-half, but it
16 was -- we were just beginning to see the, the crest of those
17 attacks.

18 Q Now, you mentioned IEDs or improvised explosive devices.
19 What was happening with IED's during your time as commanding
20 general?

21 A Well, originally, they took primarily the form of roadside
22 bombs that were buried in the ground or buried -- hidden beside
23 the road. They would be detonated by a command either by a
24 wire-control or in some cases by radio-controlled devices. As
25 we became more proficient dealing with, so every movement had to

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1 be essentially a combat operation. It became more complex and
2 so there maybe a multiple bombs coordinating with a direct fire
3 attack. As we began to develop ways to defeat that, what we saw
4 was we began to get suicide attacks. In some cases, people
5 driving vehicles with very large explosive devices in them and
6 they pull up aside a convoy and detonate them. And those were
7 extremely difficult to defend against.

8 Q Sir, you said during that answer that every movement became
9 a combat operation. What do you mean by that?

10 A The simple act of moving between any two areas that were
11 secured required a combined arms operation that you had to have
12 wrap clearance operations. You had to have security with the
13 movement element. Medevac had to be coordinated in advance.
14 You had to have quick reaction forces and, typically, we'd have
15 and unarmed drones that would be giving us surveillance of the
16 route ahead to see unusual activity. In other words, each
17 movement had to be planned as if we anticipated combat because
18 it often resulted in that.

19 Q Now, did that apply to movements of KBR personnel and
20 equipment or only to military personnel?

21 A It applied to every movement; KBR, U.S. Forces, State
22 Department, every element that's part of the Multi-National Core
23 and force it applied to.

24 Q Is there any difference, from your perspective as
25 commanding general, between moving KBR personnel and equipment

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1 in and around the country and moving military equipment around
2 the country?

3 A The threat level could vary. It would depend on how the
4 enemy saw it as a target of opportunity. A large convoy of,
5 say, fuel trucks might be perceived as a more lucrative target
6 than a smaller one of a half dozen armed U.S vehicles. So, in
7 some cases, the movement of fuel and supplies were actually
8 higher risk than combat forces.

9 Q Sir, can you describe what happened with the Iraqi
10 Constitution in October of 2005?

11 A The constitution had been put before their parliament,
12 ratified and it was put in front, the results of the election to
13 put the constitution in place and that took place. And that was
14 a very intense preparation period, because again, the Sunni
15 population had not participated in the earlier election and they
16 felt that they had made a mistake because Shia -- the government
17 was now Shia-dominated. So there was a pretty intense effort to
18 disrupt this election because they felt that the constitution
19 was not valid.

20 So there was a lot of violence in the lead up to it and
21 securing polling places and those sort of things was pretty
22 challenging.

23 Q Sir, if you look at the map you have in front of you,
24 you'll see and Anbar Province is highlighted in green and the
25 Euphrates River is labeled in blue. Were those significant

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1 during your time as commander general?

2 A At the time Anbar Providence was the most violent
3 providence. It was where a lot of resistance was located. And
4 when we had foreign fighters that were being infiltrated in by
5 the Al Qaeda forces. They would typically come from Syria along
6 the Euphrates River Valley, along roads and routes that
7 paralleled that. So there was a tremendous amount of effort
8 that went into conducting operations Al Anbar both to stabilize
9 the province and to cut off the flow of foreign fighters into
10 Central Iraq.

11 Q Sir, when did you -- when did your time as commanding
12 general of MNCI end?

13 A It ended in late January of 2006.

14 Q Where did you go?

15 A I returned to Fort Bragg, North Carolina. I was the -- at
16 that time, I was an 18th Airborne Core Commander.

17 Q Sir, did KBR provide services for MNCI when you were
18 commanding general?

19 A They did.

20 Q Do you remember some of the services that they performed?

21 A They performed a very large number of services. Everything
22 from food service, water, sanitation, transportation, movement
23 of supplies, repair of equipment, waste disposal, a very large
24 gambit of the services required in the country were provided by
25 KBR.

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1 Q Were those services important to MNCI's mission?

2 A They were absolutely critical. We couldn't perform the
3 missions without them being done.

4 Q Let me follow up on that. Did the military have the
5 organic capability to provide the services that KBR was
6 providing for the military?

7 A Not to do it on a sustained basis.

8 Q What does sustained mean?

9 A Anything over about 30 days, we couldn't sustain it with
10 the existing force structure that the Army and the military had.

11 Q All right. General Vines, I want to shift gears a little
12 bit and talk about your organizational structure of MNCI and
13 your concept of integration. Are you familiar, roughly, with
14 how the command structure of Combined Task Force 7 was set up?

15 A Generally, yes.

16 Q Okay. And in order to avoid sort of going into a lot of
17 detail, at a very high level was the command structure of
18 Multi-National Core Iraq similar to the command structures at --

19 A There were more similarities than there were differences.

20 Q And within your command, did you have a J-4?

21 A We did.

22 Q And what is a J-4?

23 A J-4 is responsible for coordinating all logistical
24 operations within whatever command it's in.

25 Q Did you work with DCMA when you were commanding general of

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1 MNCI?

2 A Very rarely did I directly interface with it. My staff did
3 interface with it on a fairly regular basis.

4 Q Who on your staff was interacting with DCMA and was it --

5 A Primarily, the J-4 and sometimes the core engineer, my
6 chief of staff.

7 Q What about interactions with KBR, did you interact
8 personally with personnel from KBR?

9 A I had a fair amount of interaction with KBR employees as I
10 circulated around the theater. But on a monthly basis, I met
11 with the senior project manager in theater to review current
12 operations of things we're doing today and how well we were
13 doing them, if we needed to do better. Sort of future
14 operations, which in the next 30 days to make sure they
15 understood what our expectations and needs were, and that they
16 were going to be able to help fulfill those. And then we talked
17 about longer term plans, typically 30 days and beyond out to,
18 say, 180 days.

19 Q And who else was at these monthly meetings with KBR where
20 you sort of talked about your 30, 60, 90-day plan?

21 A Typically, my J-3 who is the operations officer who was
22 responsible for helping plan those operations. And I had him
23 there to make sure he could provide granularity needed if there
24 was a question about the details and just -- go ahead.

25 Q If you had concerns or questions about KBR's performance,

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1 could you bring them up during that meeting?

2 A I did. I did that every month.

3 Q What about the commander's update briefs, did you hold
4 commander's update briefs?

5 A Those took place seven days a week.

6 Q What is the commanders update brief?

7 A It's a review of all the operations in theater, the
8 intelligence situation we're facing, the various -- if there
9 were any engagements that took place, what the outcome of those
10 were, how we were postured for future, how it changed our, our
11 assessment of the situation, a review of our logistical posture,
12 whether or not everyone had enough ammunition, water, so forth.
13 So, it was a comprehensive review of what had happened in
14 theater and what we anticipated the next 48 to 72 hours to look
15 like.

16 Q Did your J-4 attend your commanders update brief every day?

17 A He attended and briefed at every update.

18 Q What about KBR, were they allowed to attend the commander's
19 update brief?

20 A They were allowed to attend. Any input they had was
21 presented through the J-4.

22 Q Sir, are you familiar with the concept of a liaison support
23 officer, LSO?

24 A I am.

25 Q What is an LSO?

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1 A It's an individual assigned to a particular unit to make
2 sure that they have visibility of whatever requirements needed
3 will be for whoever they are representing. In this case, I
4 believe it was KBR.

5 Q Okay. So, what -- to focus specifically on KBR, what role
6 did the KBR LSO play in your command?

7 A They participated in planning exercises, so they could see
8 what we were considering over the next 30, 60, 90 days.
9 Determine, you know, through their subject matter experts
10 whether or not the resources were available and what trade-offs
11 we'd have to make to execute that, because constraints typically
12 existed in -- in any operation they exist in logistical area
13 whether it's the assets to move resources or that -- typically
14 mobility assets are a limiting factor.

15 Q Was the liaison officer physically in your command space?

16 A He was physically located in the J-4 space.

17 Q What about interactions with KBR below your level among
18 your staff, among the J-4's. Are you familiar with any of those
19 interactions?

20 A They took place on a daily and hourly basis. Because we
21 were constantly making adjustments to our posture with regard to
22 assets and in addition to move units based on requirements that
23 came from what was going on in theater.

24 Q Was this -- was this structure you described, the liaison
25 officer's monthly meetings and commander's update briefs, was it

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1 effective in enabling you to communicate with KBR?

2 A We found it quite effective.

3 Q Were there instances where you felt you could not
4 effectively communicate with KBR?

5 A I'm not aware of a single instance that took place.

6 Q Do you have contracting experts or personnel in your
7 command staff as the commanding general of MNCI?

8 A The contracting expertise primarily comes through the
9 Defense Contract Management Agency.

10 Q Is there somebody in the MNCI command structure responsible
11 for liaising with --

12 A There is, yes, within the J-4, yeah.

13 Q Within J-4?

14 A Yeah.

15 Q What's that person's title or billet?

16 A I'd have to review notes. I don't recall his exact title,
17 but we have someone who was responsible for providing specific
18 input to KBR in terms of what the requirements were. They were
19 reasonably familiar with the legalities and the feasibility of
20 it.

21 Q Sir, are you familiar with the concept of integration?

22 A I believe so.

23 Q Would you consider KBR integrated into the MNCI command
24 structure?

25 A I considered them integrated into the command structure.

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1 Q And why do you consider them integrated in the command
2 structure?

3 A Because they were responsive to our needs. While I did not
4 exercise command or control over them, I did not have direct
5 authority over them, they were coordinated with just like many
6 other agencies did. We had Department of Treasury, Justice,
7 FBI, post office; the whole range of people who were integrated
8 into our structure. I didn't have actual direct authority over
9 them, but they were part of our operations on a daily basis.

10 Q Sir, I'd like to shift gears away from integration in your
11 command structure and take a look at the concept of control.
12 Are you familiar with the concept of command and control?

13 A I believe so.

14 Q Okay. And can you define what command and control mean?

15 A Those are -- it's not an actually a single term. It is --
16 command is the directive authority to assign tasks and
17 responsibility for outcomes. It's directives on things that
18 organizations and people must do. Controls are the constraints
19 you place on them in terms of resources, limits, boundaries,
20 legalities, geographic areas.

21 Q Did you -- are you familiar with the concept of
22 decentralized control?

23 A I believe so.

24 Q And what does decentralized control mean?

25 A It means that you assign responsibilities and outcomes and

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1 you allow the units typically that may be geographically
2 disbursed the freedom of action to accomplish the mission in
3 accordance with constraints you placed on them.

4 Q Sir, did you exercise control over KBR in your time as the
5 commanding general of MNCI?

6 A I didn't exercise direct control over them.

7 Q What type of control did you have?

8 A We decentralized it. We did it through the DCMA, but the
9 outcomes that we identified that we need, the contract was
10 drafted in such a way that they agreed that they could perform
11 the task needed to achieve those outcomes and we monitored their
12 execution to make sure the results met our needs.

13 Q Sir, I want to ask a couple questions about how that
14 process worked. Once you identified a need, that you wanted KBR
15 to perform for MNCI, who did you give that information to, who
16 in your staff?

17 A It was typically in an operational brief we would identify
18 the task that needed to be accomplished by everyone; all units,
19 my staff sections, my functional area and the enabling task in
20 many cases would be put upon people like engineers and aviators.
21 In this case also, logistics which included KBR. So we would
22 identify the task that KBR had to achieve to support the
23 mission.

24 Q And who was responsible for insuring that KBR actually
25 accomplished the task that you wanted performed?

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1 A Well, typically they would be performed in support of a
2 subordinate unit. So, for example, if we needed to move a Army
3 erection [ph] up to the border, how effectively -- whether or
4 not they did it in accordance with the requirement, the
5 commander of that unit would report to me, we got their safely
6 and all in accordance with the plan.

7 We also had representative, contracting officers
8 representative give us feedback on whether or not it's being
9 executed according to plan.

10 Q Just to be clear, thinking about your command structure,
11 the Army Materials Sustain in Command and DCMA was not part of
12 MNCI?

13 A That is correct.

14 Q Were they still part of the process of getting KBR to
15 perform services?

16 A They were very much a part of the process.

17 Q Now, if you as a commanding general issued a task to DCMA,
18 or Army Sustainment camp for sustainment commander for KBR,
19 could DCMA or Army Sustainment Command change the substance of
20 your request and ask KBR to do something different?

21 A They didn't have the authority to change. If they -- if
22 KBR couldn't accomplish it in the time frame that we requested,
23 they could outline that to DCMA who would come back and say
24 that's not feasible for them to do that. Can we change the
25 timeline, the scope of the task or the details. Essentially, we

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1 had to approve that. They didn't have any authority to modify
2 the requirement without our concurrence.

3 Q Do you recall instances where contracting officers came
4 back to you and told you that you had to modify your request?

5 A Well, there's one instance I can recall where we had to
6 move a vast amount of engineering supplies and equipment to the
7 Syrian/Iraqi border over a period of time. And after the risk
8 assessment was done the determination was made that would
9 increase the level of risk because of the exposure people would
10 have to lack of sleep and enemy attack, so we extended the
11 timeline. That would be one example. It wasn't that often, but
12 that would be an example.

13 Q All right. So I want to think about sort of the predicate
14 step of this process, which is how you as the commanding general
15 actually decided what needed to be done and what you wanted to
16 do. How did you -- what factors did you consider when you were
17 deciding what you might ask KBR to do or perform?

18 A Unit in command is a particularly desirable function. If
19 an organization can do it by itself without any external
20 resources it can do it more efficiently and more effectively.
21 So when you have to integrate organization, even military
22 organizations, it increases typically the risk in the time.

23 When you have to integrate someone who you don't exercise
24 direct command of, that creates another level of complexity and
25 risk. So we didn't ask external assets, such as KBR, to perform

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1 tasks that could be done internally. So that was always one
2 factor.

3 Risk was always a factor. What can go wrong? How bad can
4 it go wrong? What's the outcome? And so, we tried to keep
5 things as simple and streamlined as possible. But if it's
6 something as large as we were dealing with, that was seldom
7 possible.

8 Q Did you have financial resources as the commanding general
9 of MNCI?

10 A I did have a fairly large budget.

11 Q Did you have to consider security when you were making
12 decisions?

13 A Security was always a key aspect of that -- both
14 operational security before the execution of the mission and
15 providing security of the assets that were being moved,
16 providing security of the forces. Every single asset that had
17 to be moved, whether it was food for dining facility, water,
18 ammunition, housing, engineering equipment, everyone of them you
19 had to provide security for that movement and that created
20 additional distractions from your primary focus.

21 Q What about the impact of your decisions on service members
22 health? Is that something you considered when you were deciding
23 how to, conduct operations?

24 A That was overriding. We had to balance, for example,
25 whether to bring in external housing or use existing structures,

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1 what the relative cost and benefits of each would be. How good
2 is good enough in terms of the quality of life, the food and the
3 amenities you provide. And any time you had to do additional
4 things, it required additional support personnel which had to be
5 secured as they moved, had to be fed. So, adding things to
6 the -- either the quality of life or the infrastructure was
7 expensive in terms of time, material and risks.

8 Q You mentioned the expression in there, sort of, the good
9 enough. Does that have a specific meaning to you?

10 A It was a directive that Multi-National Force Iraq
11 Commander, General Casey, my direct boss had put out saying,
12 we're in the process of getting a transition and draw down, so
13 we need to look at what is good enough so that we can care for
14 our soldiers and those who are supporting civilians that are
15 over there. Care for them, provide necessary quality of life
16 amenities, but we don't do anything unnecessary that will cause
17 us more effort as we begin to withdraw.

18 Q Do you know what preventive medicine is, prev. med?

19 A I believe I do.

20 Q What is it?

21 A It is a function that essentially tries to identify medical
22 risk factors and takes steps to prevent any impact on the force,
23 the troops, their health, their welfare and their availability
24 for their mission.

25 Q Did they provide you information when you were commander --

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1 A They did. That was part of the commander's update brief
2 every day. And any time we had someone effected with something
3 like dysentery malaria, any kind of health effect, that was
4 briefed.

5 Q Did that factor into your decision-making process?

6 A It always did, yes.

7 Q What about the impact of your decisions on the local
8 population, on Iraqis? Was that part of your decision-making
9 process?

10 A It was a significant part because some things that might
11 make the force more safe as it transitioned could be disruptive
12 and dangerous to the population. The way you conducted convoy
13 movements, the time of day you conducted them, the way you used
14 force protection measures to protect your force could have
15 adverse effects on the population, our relationship with them
16 and the way they viewed the Iraqi government as well as the
17 United States.

18 Q Were there others? You mentioned a bunch of factors; cost,
19 security, health, effect on the Iraqi population. Were there
20 other significant factors that you regularly considered when you
21 were making decisions as commanding general?

22 A Every action had a cost associated with it. Typically, it
23 meant more people in theater to conduct the actions you were
24 doing. And so consequently, we attempted to in some cases
25 minimize the -- our footprint. That was something that was

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1 pretty important, because every person you bring over there is
2 exposed to all the hazards of combat zone; physical violence,
3 disease and injury.

4 Q Just by way of illustration, for example, if you were
5 considering whether or not to close a forward operating base,
6 how would your thought process work? What would you consider to
7 make that decision?

8 A There were some fairly specific guidelines in terms of the
9 kinds of things that had to be -- couldn't be turned over to a
10 host nation. And typically, it was durable high value items
11 that might include things like power generation equipment,
12 certainly ordnance and so forth, and things of value over a
13 certain amount.

14 An example that created some challenges for us is container
15 housing units that had a value that exceeded that, but their
16 condition after they had been exposed to the elements for months
17 or years, their condition was effected by the transportation and
18 so forth. So the cost of bringing them back to a central
19 location meant you had to expose soldiers to risk to do that,
20 because they were very high in terms of their cubic volume. It
21 meant a lot of trucks had to be used to do that and each truck
22 put people at risk. So there was, there was some tradeoffs made
23 there and we tried to minimize the things we had to transport.

24 Q If you couldn't transport them, what would you do with
25 them?

JOHN VINES - DIRECT EXAMINATION

1 A Leave them in place and turn them over to the host nation.
2 Some cases, the local population or city would be the typical.
3 It would be demilitarized things that were of value to a
4 potential insurgent were taken, but ideally they could be used
5 effective for a school or for housing or for some local
6 citizenry.

7 Q Could KBR have unilaterally made the decision to close a
8 FOB?

9 A No.

10 Q Why not?

11 A Because it had significant effects for a whole range of
12 reasons. They didn't know all the functions that took place in
13 a forward operating base. We may have been using it for force
14 protection, for medevac support or for combat patrol. So
15 typically, they were not fully aware of all the functions that
16 were taking place here. So they would never have the authority
17 to do that. They would support us once we said we're going to
18 close this particular location and here's the assets we're going
19 to need to move the equipment out, and here's the timeline we
20 have to do it in.

21 Q What about DCMA or Army material standard command, could
22 they order KBR to shut down a FOB?

23 A No, they had -- they had no say in that issue. They could
24 only support it.

25 Q Would they be involved in the process if you asked them to

JOHN VINES - DIRECT EXAMINATION

1 be involved in the process?

2 A Well, once the decision was made that we needed to close
3 down a FOB, then we had to work through DCMA and ASCC to work
4 the contract appropriately with KBR to provide the resources
5 that we didn't have internally.

6 Q Now, just to be clear, could anybody other than you, the
7 commanding general of MNCI or your staff have made that
8 decision?

9 A No.

10 Q Now, sir, turn back to the slide you have in front of you.
11 When did you first become aware, whether during deployment or a
12 brief about how waste was disposed of in Iraq?

13 A The first time I flew in the country.

14 Q How did you learn about, learn about how waste was being
15 burned when you flew in the country?

16 A We flew over a burn pit.

17 Q You saw smoke?

18 A Yeah, in the open pit, yeah.

19 Q Had you seen burn pits before?

20 A I saw them extensively in Afghanistan.

21 Q When were you in Afghanistan?

22 A 2002, 2003.

23 Q And there were burn pits operating there?

24 A Correct.

25 Q Were there incinerators in Afghanistan?

JOHN VINES - DIRECT EXAMINATION

1 A No.

2 Q When you assumed command in January of 2005, did you
3 authorize the continued use of surface burning?

4 A Not directly, but by assuming the operations of it, we were
5 underwriting it and yes, I accepted that. There's a term that
6 sometimes used in military that standing orders remain in effect
7 until they are revoked and that's exactly -- that applies pretty
8 closely here.

9 Q So, because burn pits were already in operation, it didn't
10 require you to state affirmatively they would continue, is that?

11 A That's correct. I mean, we reviewed everything that was
12 going on to see what, if anything, we needed to change, that
13 needed to be changed. So, the execution of that was considered
14 fairly soon after we got there, but we didn't change that.

15 Q Did you ever, in the course of your time as the commanding
16 general at MNCI, consider using methods other than burn pits?

17 A No, it was -- no.

18 Q Did anybody ever mention the possibility of using
19 incinerators to you?

20 A No.

21 Q Did anybody ever mention the possibility of using recycling
22 to you?

23 A No.

24 Q Did anybody ever suggest the possibility of using
25 landfills?

JOHN VINES - DIRECT EXAMINATION

1 A No. You know, I think it's relevant to just make the
2 distinction between the conduct of operations in areas such as
3 we're in today and an area where the slightest movement exposes
4 those moving to hostile actions. And so something that sounds
5 fairly simple, like recycling, begs the question of where do you
6 take the recycling and do you have the resources to conduct a
7 combat operation to carry recyclables to another location.

8 Q So, if you felt it was important to your combat operations
9 to use incinerators instead of burn pits, did you have the
10 authority to do that, to order that?

11 A I would have had the authority to request it. I couldn't
12 tell you what the timeline would have been before they would
13 have been available. Typically, something that was complex like
14 that, it could have been many months before it could have been
15 brought into theater.

16 Q Could KBR have decided without your approval to switch from
17 burn pits to incinerators?

18 A No.

19 Q Could DCMA or Army Material Sustainment Command, could they
20 have decided to use incinerators instead of burn pits without
21 your approval?

22 A No.

23 Q Why not?

24 A Because everything that came in the country required
25 support sustainment. It had side affects. So before anything

JOHN VINES - DIRECT EXAMINATION

1 was brought in we'd have to analyze what's the impact going to
2 be in terms of additional support required, maintenance
3 personnel required, spare parts, movement. There was a whole
4 range of things and it ties back in to what General Casey's
5 document says, which is, let's stay with good enough.

6 Q Sir, you mentioned earlier when we were talking about your
7 command structure that you had a liaison in your four, a liaison
8 with contracting commands, is that right?

9 A That's correct.

10 Q If you requested that KBR perform a service that wasn't
11 permitted under the contract, who would talk to you -- who would
12 come back to you and talk to you about whether or not the
13 contract permitted that service to be performed?

14 A Well, it would be very seldom that there would be
15 discussion where I would ask KBR to do something. If I said,
16 let's see if this is feasible, they might come back and say,
17 we don't have the internal capability to do it and it's not in
18 the contract. If we want to do that, we have to modify the
19 contract. And so then we'd determine whether or not that would
20 achieve the effect we needed within the time we needed it
21 accomplished in.

22 Q Sir, did you have a staff judge advocate on your staff?

23 A I did, I had a very large group of lawyers.

24 Q And what were those lawyers tasked with doing for you?

25 A I'm sorry?

JOHN VINES - DIRECT EXAMINATION

1 Q What were those lawyers, what was their responsibility?

2 A Well, they were operational law to make sure we complied
3 with the laws of the land, warfare and making sure that our
4 soldiers weren't exposed to any liabilities from the things we
5 were doing. We had contract law. And had just a plethora of
6 capability. I think we had well over a hundred lawyers on my
7 staff.

8 Q Sir, are you familiar with the document, the MNCI
9 Environmental Standard Operating Procedure?

10 A I'm not familiar with it.

11 Q Have you ever read LOGCAP III?

12 A No.

13 Q Now, did any of the lawyers on your staff or the
14 contracting liaisons on your staff, did they ever approach you
15 and tell you that KBR wasn't authorized to continue to use burn
16 pits?

17 A No.

18 Q Were you aware as the commanding general that KBR was
19 operating burn pits?

20 A Yes.

21 Q How were you aware of that?

22 A Because I flew probably three or four missions a day and
23 every place I went into you could see a burn pit.

24 Q Did any of your lawyers or contract compliance officers
25 ever come to you and tell you that KBR was violating MNCI

JOHN VINES - DIRECT EXAMINATION

1 environmental standard operating procedure?

2 A I have no recollection of that.

3 Q Did anybody from your command, DCMA or Army material and
4 sustainment command ever approach you and tell you that KBR's
5 authorization of burn pits was not authorized under any
6 contract?

7 A No.

8 Q Do you believe that you had staff employees at MNCI who
9 were responsible for knowing whether or not KBR was violating
10 the contract?

11 A I do.

12 Q Who would those individuals have been?

13 A I'm sorry?

14 Q And who would those individuals have been? Who was
15 responsible?

16 A It was primarily in the J-4, but we had representatives
17 from DCMA who inspected all the activities on a recurring basis,
18 typically weekly.

19 Q Sir, do you remember your deposition from last fall down in
20 Florida?

21 A I remember the deposition.

22 Q Okay. Do you remember you talked about how much time you
23 spent thinking about waste management issues when you were
24 commanding general of MNCI?

25 A At the time I think we discussed me personally was about

JOHN VINES - DIRECT EXAMINATION

1 ten hours. The staff was a bit deal more than that. It was in
2 the hundreds.

3 Q So you spent approximately ten hours thinking about waste
4 management issues. When you were thinking about waste
5 management issues, what was it that you were thinking about?

6 A Well, there were a variety of things in terms of the
7 potential for vermin, waste water, contamination of the living
8 areas, exposure -- positioning of the burn pits to make sure
9 that insurgents couldn't infiltrate through a gap in the wire.
10 Making sure that explosive ordnants was not disposed of that
11 could later be used against us for improvising explosive devices
12 for the secular forces, a range of things that were reviewed on
13 a periodic basis, but it was not something that I spent
14 personally a great deal of time on.

15 Q Do you know if your staff spent additional time considering
16 waste management issues?

17 A If I spent an hour on it, they probably spent ten times
18 that because they prepared so when the decision was made and we
19 understood all the alternatives, what the cost were, what the
20 possible outcomes were and what the recommended course of action
21 was.

22 Q Sir, thinking about the use of burn pits on a given base,
23 who has the authority to determine where facilities or buildings
24 are located on a base in Iraq?

25 A The base commander was the one ultimately responsible.

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1 Typically, on a larger base, he had someone sometimes called the
2 base mayor which would be not really similar to a mayor.
3 Probably more akin to a city manager who is responsible for all
4 functions on the base to the commander, but ultimately it was
5 the base commander who had authority to make decisions.

6 Q Could DCMA or the Army Sustaining Material Command have
7 determined where facilities or services would be provided on the
8 base without the base commander?

9 A No.

10 Q Could KBR have made those decisions?

11 A No.

12 Q Why couldn't KBR not have made those decisions?

13 A Because the siting of any facility could affect the road
14 network, communications plan, building a quick reaction force,
15 maneuvering around the base in event of infiltration, ability
16 and make up of personnel to respond to an incident, potential
17 for introduction of disease, the effect of wind direction, the
18 effect of smoke, operation on an air field. There were a whole
19 range of things that had to be considered before anything was
20 positioned to make sure we understood the effect of electronic
21 spectrum and the list went on and on. But no, only the base
22 commander was in a position to consider all those factors.

23 MR. JOHNSON: Your Honor, may I enter the well?

24 THE COURT: You may.

25 BY MR. JOHNSON:

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1 Q General Vines, I'm going to show you a demonstrative we
2 used in opening, which has a couple of call outs. From the
3 plaintiff's master complaint, I just want to ask you a couple of
4 quick questions here. It says in that top line, "KBR breached
5 its duties by failing to locate these burn pits in a manner that
6 reduced harmful effects on human health." Do you see that?

7 A I do.

8 Q Okay. In your experience as commanding general of MMCI,
9 did KBR have duty to locate burn pits on FOBs or bases in Iraq?

10 A No, it did not have the duty, it didn't have the authority.

11 Q Who did have the duty?

12 A Base commander.

13 Q The second box down says, defendants failed to timely and
14 properly provide recycling services. Do you see that?

15 A I see that.

16 Q Okay. In your time as the commanding general at MNCI, did
17 KBR have the duty to provide recycling services?

18 A No. The point I tried to make earlier that recycling is
19 not something that is similar to what happens in Montgomery
20 County, Maryland. Recycling would have amounted to a combat
21 operation and something we didn't have the resources to dedicate
22 to it.

23 Q Who, who ultimately would decide that you did have the
24 resources and that you wanted to use recycling services?

25 A If the base commander recommended that, he, he could. If

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1 he had the resources, he could do it. That said, we didn't
2 resource base commanders lavishly enough to do everything that
3 was in "a nice to do" category. We had enough resources and no
4 more. And so, other organizations were very strapped in terms
5 of security forces, combat forces, transportation assets. And
6 so, we would have probably had taken assets from somebody who
7 was dedicated to the non-combat functions.

8 Q What about this third box. It says, defendants failed to
9 timely and properly bring incinerators on line. During your
10 time as commanding general, was KBR responsible for bringing
11 incinerators on line?

12 A They wouldn't have had the authority to do that.

13 Q And would bringing incinerators into the country have been
14 consistent with your accomplishment of your combat mission?

15 A It would have been because they were a part of addition
16 diversion of resources by security to provide a security
17 agreement to bring those incinerators in because of the security
18 requirements for movements as I outlined previously.

19 Q And you as commander didn't consider that a priority?

20 A No.

21 Q And then this fourth box says, KBR had a duty to warn about
22 air and water qualities. Do you see that?

23 A I see that.

24 Q Did KBR during your time as commanding general in Iraq in
25 2005 have an independent duty to warn soldiers, sailors, airmen

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1 and marines about quality of water?

2 MR. PHELPS: Your Honor, if I might just lodge an
3 objection. Do you mean a tort to warn? I'm not sure that's
4 necessarily something that he would be able to provide.

5 MR. JOHNSON: I can narrow the question.

6 THE COURT: Why don't you rephrase the question?

7 MR. JOHNSON: Okay.

8 BY MR. JOHNSON:

9 Q General Vines, did you request that KBR warn your service
10 men, sailors, airmen and marines at MNCI about air and water
11 issues?

12 A We had, of course, surgeon and environmental health
13 officers that were both trained and responsible for doing that.
14 I did not request it.

15 Q So you relied on your core surgeon and on your health
16 officers?

17 A That's correct.

18 Q And was there ever an instance when you were the commanding
19 general at MNCI when you requested through the contracting chain
20 of command that KBR provide a certain service and the
21 contracting command unilaterally decided that KBR would actually
22 provide a different service than the one that you requested?

23 A It never happened during my period.

24 Q To your understanding, would DCMA and Army Material Sustain
25 Command have the authority to change your request?

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1 A No, I can't imagine that would be the case. They -- I
2 don't know the case law around it, but that never happened, so.

3 Q All right, then the last question, General Vines. You
4 touched on this a little bit, but I want to make sure that we
5 get the full answer. You stated in your deposition that you
6 were trying to use peace time standards in war time operations.
7 Do you remember that?

8 A I remember that discussion.

9 Q And when you said that, what did you mean?

10 A I mean the things that we take for granted about freedom of
11 movement and safety and security as we go about our daily lives
12 here was not the case in a combat zone, because every movement
13 outside a secured area was a combat operation. Indeed,
14 day-to-day life was pretty dangerous. Every -- almost every
15 base every day was subjected to mortar attacks and direct fire
16 attacks on the base. So the things that we take as normal
17 activities were not normal or available to the people in that
18 combat zone.

19 MR. JOHNSON: Thank you, sir. No further questions,
20 Your Honor.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 BY MR. LEDLIE:

24 Q Good afternoon, General Vines.

25 A Good afternoon.

JOHN VINES - CROSS-EXAMINATION

1 Q Just to clarify a few points, sir. You served as the
2 commanding general of Multi-National Core Iraq from January,
3 2005 until I believe I heard you say, late January of 2006,
4 correct?

5 A It was approximately one year and two weeks. I couldn't
6 give you the exact dates.

7 Q And your testimony here today is limited to the things
8 about which you have personal knowledge with respect to your
9 time period in Iraq, correct?

10 A That is correct.

11 Q Okay. And, General Vines, you agree that there's a
12 difference between command authority and contract authority?

13 A Absolutely.

14 Q And you did not have command authority over KBR's
15 employees; is that correct?

16 A That is correct.

17 Q And you agree that KBR as a corporation was not part of
18 your chain of command?

19 A That's correct.

20 Q And you agree that KBR employees do not hold any military
21 rank and were not assigned military responsibilities, correct?

22 A Correct.

23 Q And KBR's employees worked for whom, sir?

24 A I'm sorry?

25 Q KBR's employees, who did they work for?

JOHN VINES - CROSS-EXAMINATION

1 A They worked for KBR.

2 Q And you expected KBR to manage their employees in
3 performing their contract, correct?

4 A With regard to what? What outcomes are we talking about?

5 Q Sure, sir. With respect to the authoritative direction of
6 individual KBR employees and what they did in their day-to-day
7 work, you expected KBR's own management to manage their
8 personnel, correct?

9 A That is correct.

10 Q And you relied on KBR to hire qualified personnel to
11 perform the tasks they were delegated under the LOGCAP III
12 contract?

13 A The contracting officer required that, yes.

14 Q And you agree that the contracting documents are the
15 primary method by which the military controls what a contractor
16 does or does not do, correct?

17 A Correct.

18 Q And as a general officer, you understood that there were
19 express limitations on your ability as a commander to influence
20 the contracting process, true?

21 A That's true.

22 Q You agree that you had no authority to direct who would
23 receive a contract, correct?

24 A None.

25 Q No authority to direct the terms of the contract, true?

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1 A Not to direct. I could request.

2 Q Okay. And all you wanted was an outcome, correct?

3 A That's correct.

4 Q And were you involved in the, in providing the -- did you
5 deal with the actual contracting with respect to waste
6 management, as far as the level of specificity?

7 A No.

8 Q Okay. Did you ever supercede the contracting channels and
9 directly order that KBR do anything?

10 A Never.

11 Q KBR's employees weren't soldiers, true?

12 A No.

13 Q You agree that command and control of a civilian contractor
14 is tied to the terms and conditions of the government contract,
15 correct?

16 A That's a legal term of art that -- it's not an operational
17 term of art the way you're using it. Command and control you're
18 using in a legal context. I'm not qualified to judge the
19 legality of that. I am in the operational art.

20 Q All right. In the operational art, you didn't have direct
21 command over KBR?

22 A That's correct.

23 Q And control over KBR was handled primarily through the
24 DCMA, correct, contracting channels?

25 A That is correct, unless it related to the immediate health

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1 and welfare of soldiers or contractors. Only then could you
2 say, stop, don't enter this area.

3 Q Thank you, sir. The terms and conditions of the contract
4 is the way that the military controls a contractor?

5 A That's correct.

6 Q And you agree that the contract sets the performance
7 standards how the -- what they need to do in the field, correct?

8 A That is correct.

9 Q And you agree the contractors are expected to comply with
10 their contract requirements?

11 A I agree with that.

12 Q And you agree as the commanding general, former commanding
13 general of Multi-National Core Iraq, that if permanent changes
14 were needed to the contract that you would have requested those
15 changes be made through the proper contracting channels,
16 correct?

17 A Correct.

18 Q Even in the theater of war, a contracting process works --
19 I'm sorry. It matters, correct?

20 A It matters in very extreme circumstances when life and limb
21 are at risk. I can foresee an occasion where you might ask a
22 contractor to do something outside the scope. It never happened
23 in my time there.

24 Q Very quickly, DCMA did not fall under your direct command?

25 A No, they did not.

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1 Q And when it came to a change in the contract, DCMA, that
2 was their responsibility, true?

3 A If we requested a change, it was their responsibility to
4 help coordinate that change and get it put in the contract. We
5 had a role in terms of identifying what modifications were
6 needed, but it was their responsibility to execute that.

7 Q The contract officers for the LOGCAP III worked for DCMA,
8 true, or Army Material --

9 A Correct, correct.

10 Q And you agree that the contracting officer is the only
11 government official with the authority to modify a contractor,
12 true?

13 A The only one that I know of.

14 Q And that's standard. Even in the war theater it was
15 adhered to during your command, to the best of your knowledge,
16 absent some imminent health and safety reason?

17 A To best of my knowledge.

18 Q KBR employees were not integrated into the official command
19 authority of Multi-National Core of Iraq, correct?

20 A Correct.

21 Q You were asked earlier whether you read the LOGCAP III
22 contract. You didn't read any of the task orders that fell
23 under the LOGCAP III contract, correct?

24 A I did not.

25 Q And you don't have any personal knowledge as to the

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1 specific waste management responsibilities that KBR was expected
2 to follow contractually?

3 A Any specific knowledge?

4 Q Yes, sir.

5 A I had some in terms of the screening of materials for
6 hazardous materials going in and that sort of thing, but as for
7 the details, no.

8 Q It was your understanding that hazardous materials were not
9 authorized to be placed in burn pits?

10 A Absolutely.

11 Q You never personally saw any documentation from any
12 administrative contract officers granting KBR the permission to
13 operate a burn pit, true?

14 A No, I did not.

15 Q You don't recall ever having any conversations with anyone
16 regarding the specific details of KBR's handling of waste
17 operations when a burn pit was being used, true?

18 A True.

19 Q You did talk about battlefield circulation tours and
20 talking to service members. The topic of KBR burn pits didn't
21 come up during that that you can recall?

22 A Only on a couple of occasions we'd stop at a burn pit while
23 something was going on and a conversation, but no, no detailed
24 conversations about anything related to their operation.

25 Q And you never went to any meetings at the base level where

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1 CORs or mayor cells were discussing waste disposal with KBR,
2 true?

3 A True.

4 Q We've heard some testimony from you, sir, about the CORs
5 the contracting officer representatives. You're familiar with
6 those?

7 A I'm familiar with that term.

8 Q Okay. Based on what you saw during your time in Iraq, CORs
9 did not have the ability to change the terms and conditions of
10 the contract, correct?

11 A Based on what I saw.

12 Q And agree, sir, that in your experience, there was a high
13 turn over of CORs during your tenure?

14 A That is correct.

15 Q And there was not a lot of continuity with the CORs in
16 terms of training, correct?

17 A I can't speak to that, because I didn't observe it. The
18 outcome that I saw indicated probably there was not a lot of
19 continuity.

20 Q Based on your time in Iraq, General, you agree that the
21 military was inadequately prepared for the scale of contract
22 management that was required during your tenure there, correct?

23 A I was not in a position to judge that since that was not my
24 functional responsibility.

25 Q Okay. General, you recall the deposition that you and I

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1 participated in November 4th, 2016, sir?

2 A I remember November 4th, 2016.

3 Q And you took an oath and you provided testimony about your
4 experiences?

5 A That's correct.

6 Q All right, sir.

7 At this time, Gina, can we just publish --

8 In response to that, sir, you testified under oath to the
9 following. Can you please.

10 (Video recording was played.)

11 BY MR. LEDLIE:

12 Q And General, you found, you personally observed a whole
13 range of things on the part of contract management that were not
14 well executed, correct, sir?

15 A That were not what?

16 Q Well executed, sir.

17 A I, they weren't well executed, correct. I don't know about
18 a whole range, but yes, there were things that weren't well
19 executed.

20 Q For example, contract management, but also payment
21 methodology and evaluation performance surveillance, correct?

22 A I don't recall any discussion about that and I didn't
23 observe the --

24 Restate that question.

25 Q Sure. The question I asked you was there were a whole

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1 range of deficiencies in DCMAs execution of their duties that
2 you noted during your command. We had a discussion about this
3 and you noted several things. You said, well, yeah, there was
4 contract management, but also drafting of contracts, payment
5 methodology, evaluation performance, incentives. Those were all
6 areas that --

7 A The last word was?

8 Q Incentives, General.

9 A Okay.

10 Q Do you agree that you noticed problems with the way --

11 A The terms of the contract, I noticed problems. I can't
12 recall the context of incentives. I don't recall the background
13 on that. I can't give you an example of where that was
14 improperly done.

15 Q Fair enough, general.

16 Going back to the issue of siting on a base, General. You
17 expected that a civilian contractor would have input into the
18 siting decisions as to where their activities would take place
19 on a base, correct?

20 A They could make recommendations for sure and should.

21 Q And you would look to a subject matter expert who -- for
22 contracted duty if they were aware of a safety concern to bring
23 that to the command's attention, correct?

24 A Any safety issue should be brought to the commander's
25 attention. So if there was a subject matter expert present, I

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1 would expect that to happen.

2 Q Thank you, General.

3 THE COURT: Before any cross, General, I want to make
4 sure I understand your testimony.

5 When you arrived in Iraq, the use of open burn pits
6 was a given. It was already a decision made by your
7 predecessors, correct?

8 THE WITNESS: That's correct, Your Honor.

9 THE COURT: You've already indicated you're not
10 familiar with the actual full content of the LOGCAP contracts
11 regarding KBR's performance, is that right?

12 THE WITNESS: That's correct, Your Honor.

13 THE COURT: At any time did it come to your attention
14 that's use of the open burn pits violated the LOGCAP contract?

15 THE WITNESS: No, it did not.

16 THE COURT: Thank you.

17 MR. JOHNSON: No redirect, Your Honor.

18 THE COURT: Thank you very much. You may step down.

19 (Witness excused.)

20 MR. RUSSELL: Your Honor, KBR calls Mike Mayo.

21 COURT REPORTER: Can I have your name counsel?

22 MR. RUSSELL: Dan Russell.

23 MIKE MAYO, DEFENSE WITNESS, SWORN

24 THE DEPUTY CLERK: Sir, please speak directly into the
25 microphone, state your name and please spell your first and last

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1 name.

2 THE WITNESS: Michael Richard Mayo.

3 THE DEPUTY CLERK: Can you please spell Mayo?

4 THE WITNESS: M-A-Y-O.

5 MR. RUSSELL: Your Honor, if I might briefly.

6 (A discussion was held off the record.)

7 MR. RUSSELL: Your Honor, apologies. The only reason
8 for the side bar is we're trying to figure out -- we have a
9 witness who is down in Burke, Virginia right now. We had hoped
10 to put him on this afternoon. It's looking increasingly like
11 that's not going to happen, but we have to give him a go or
12 don't go.

13 My inclination is with this witness and two more to
14 follow before we get to him, that the likelihood of getting him
15 on the stand even before 5:00, much less on and off, is
16 extremely low. That said, if we take that risk and it turns out
17 differently, we don't want to waive, obviously, the opportunity
18 to present that witness. So with Court's indulgence, we'd like
19 to tell him --

20 THE COURT: How long a witness is he going to be?

21 MR. MATTHEWS: He would be the last witness.

22 THE COURT: How long?

23 MR. MATTHEWS: Direct would be around the nature of 20
24 minutes.

25 THE COURT: Well, let's see how we do. We may have to

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1 carryover a few minutes tomorrow to finish it up. So that's
2 your caboose witness, not going to be a train of witnesses if he
3 doesn't make it today, right?

4 MR. MATTHEWS: He is the last witness.

5 THE COURT: Let's move on with what we've got.

6 MR. RUSSELL: Your Honor, I've got some slides.

7 THE COURT: Yes.

8 DIRECT EXAMINATION

9 BY MR. RUSSELL:

10 Q Good afternoon, Mr. Mayo. How are you doing?

11 A Good.

12 Q Could you -- before we get into the substance of your
13 testimony, I wanted to give the Court a little bit of your
14 background. First of all, sir, where do you live?

15 A McDonough, Georgia.

16 Q Are you currently employed?

17 A No.

18 Q Are you retired?

19 A Yes.

20 Q Did you have a career in the military?

21 A I did.

22 Q If you could, could you give the Court a brief overview of
23 your military career beginning -- when was it that you began
24 with the military?

25 A I joined the military in June, 1965. Was on active duty

MIKE MAYO - DIRECT EXAMINATION

1 for eight and-a-half years until 1973. I got in the reserve
2 program and retired from reserves in 2005. So, a Department of
3 the Army civilian from 1973 until 1996.

4 Q And during your time of active duty, did you have any
5 deployments?

6 A I was in Vietnam twice.

7 Q Okay. And your Army/civilian career, when did that end?

8 A 1996.

9 Q And when did you retire from the military?

10 A 2005.

11 Q Upon your retirement, what was your rank?

12 A Major General.

13 Q Following your retirement from the military, did there come
14 a time when you worked for KBR?

15 A Yes.

16 Q And when was that?

17 A March, 2006.

18 Q And we've prepared a slide here, once it comes up, but if
19 you could, as we're getting the slide up, just tell the Court,
20 what was your position when you started with KBR?

21 A I was called the chief processing officer.

22 Q And for how long did you work as a chief processing
23 officer?

24 A March of 2006 to July of 2006.

25 Q After your time as a chief processing officer, did you have

MIKE MAYO - DIRECT EXAMINATION

1 another role with KBR?

2 A After that time, I was the procurement supply manager from
3 July, 2006 to October, 2006.

4 Q And after your time as the procurement supply manager, did
5 you have another position with KBR?

6 A I was a deputy program manager for support from October,
7 2006 till July, 2007.

8 Q And from there did you also have another role with KBR
9 LOGCAP III?

10 A In July, 2007, I became principal program manager for
11 LOGCAP.

12 Q The last two positions here, the deputy manager for support
13 and the principal program manager for LOGCAP III, I want to
14 focus a little bit on those.

15 First of all, as the deputy program manager for support,
16 where were you physically located?

17 A Victory Base, Baghdad.

18 Q And what was the geographic region over which you had
19 responsibility as a KBR manager over LOGCAP III employees?

20 A As the PSM in Iraq and Afghanistan.

21 Q This is as the deputy program manager?

22 A For support, yes.

23 Q And approximately how many KBR employees were working below
24 you on LOGCAP III?

25 A I don't remember the number. There were thousands, but

MIKE MAYO - DIRECT EXAMINATION

1 direct reports, our direct reports are only about ten.

2 Q And then shifting to your time as the principal program
3 manager from July of '07 to December of 2008, what was the
4 geographic region that you were responsible for?

5 A Middle East. I had Iraq, Afghanistan, Kuwait and the
6 United Arab Emirates, I had functions there.

7 Q And approximately how many KBR LOGCAP III employees worked
8 under you?

9 A At peek, there was six to 5000.

10 Q Who did you report to when you were the principal program
11 manager?

12 A The vice-president for operations maintenance and
13 logistics.

14 Q Was that person in theater?

15 A No, Houston.

16 Q Were you the senior most LOGCAP III employee in theater?

17 A Yes.

18 Q Mr. Mayo, during your time working under LOGCAP III, what
19 was the operating environment like in Iraq?

20 A The whole time?

21 Q Yes, sir.

22 A So when I got there in March, 2006 and, well actually
23 through the whole period, there was a lot of hostile action,
24 mortars and rockets coming in, stray bullet rounds coming in.
25 Our employees who went outside the wire for convoys were getting

MIKE MAYO - DIRECT EXAMINATION

1 killed and wounded, and it was the same environment throughout
2 the period.

3 Q And we've mentioned LOGCAP III here. If you could describe
4 in general your understanding of the what the purpose of the
5 LOGCAP III contract was?

6 A It was to provide base-like support and some combat service
7 support type functions for the military.

8 Q And what services did KBR perform under the LOGCAP III
9 contract?

10 A On the base-like support, it was everything from laundry to
11 housing, dining facilities. On the combat service support, it
12 was things like transportation, maintenance type activities.

13 Q And for demonstrative purposes, we've created the slide.
14 Does this slide list services that KBR performed under LOGCAP
15 III?

16 A Yes, it does.

17 Q And likewise, is it your understanding that the services
18 that KBR performed under LOGCAP III were the types of services
19 that the military previously performed?

20 A Yes.

21 Q So, services like dining facilities, laundry services?

22 A Right.

23 Q Waste management?

24 A Right.

25 Q Maintenance?

MIKE MAYO - DIRECT EXAMINATION

1 A Yes.

2 Q Mr. Mayo, to what extent, if any, were those services that
3 KBR performed under LOGCAP III important to the military
4 mission?

5 A Well, so in my former experience as Department of Army
6 civilian, I was familiar with the changes the Army was going
7 through and saw a lot of the combat support service core units,
8 laundry units, dining facility units, maintenance units the Army
9 had removed from the force structure. So, when Iraq came along,
10 the military strategy was going to be to use contractors.

11 Q And, sir, do you have a sense of some of the statistics
12 related to KBR's overall performance and services under LOGCAP
13 III?

14 A Yes. So, we had what was known as contract deliverable
15 requirement reports. And so one of those requirements was to
16 give the government on a periodic basis, usually a monthly
17 basis, a magnitude of effort as to what was being accomplished
18 at our sites.

19 Q And once again, for demonstrative purposes, I'm showing you
20 some statistics here on the slide. What are those statistics?

21 A Well, it shows the number of meals. Now, this is for the
22 entire period of LOGCAP III. So, it shows the number of meals,
23 the laundry, the liable laundry that has the fuel removed so
24 it's navigated. And then at the bottom, it shows the number
25 the number of casualties, because even though we were

MIKE MAYO - DIRECT EXAMINATION

1 contractors, we were in the same environment as the military and
2 so we were suspect to all the hostile activities the military
3 was exposed to on campus and our truck drivers outside of camps.

4 Q And that number is 1,031 casualties?

5 A Yes, sir.

6 Q What does that include?

7 A Killed and wounded.

8 Q Sir, in performing these services under LOGCAP III, to what
9 extent if any did KBR interact with military on the ground
10 performing this work?

11 A It was constant contact. At site level, almost daily
12 contact and at COR's level, not so much daily, but every other
13 day or so.

14 Q I'll shift now to another slide and showing you. And are
15 you familiar with this slide?

16 A I am.

17 Q What is it?

18 A When new units would come into -- excuse me, come into
19 Iraq, then DCMA or the district support director would have
20 orientation to show how LOGCAP worked within Iraq.

21 Q And have you seen slides like this before?

22 A I have, I've attended some of their orientation meetings.

23 Q And I'd note for the record that this slide is taken from
24 KBR Exhibit 143 at page 7 as indicated at the bottom. And
25 Mr. Mayo, I want to shift this version that's in our exhibit.

MIKE MAYO - DIRECT EXAMINATION

1 It's not as readable as I'd like, so we created a slightly
2 simplified version. And before I go any further, I did want to
3 confirm, I guess, before I even get to that question, there's a
4 reference at the top of the slide to Team LOGCAP. Do you know
5 what Team LOGCAP is?

6 A Yeah, Team LOGCAP was a partnership or relationship among
7 all the facts involved in the actual execution of the contract.

8 Q Why is it called Team?

9 A Because everybody had to work together to make sure that
10 what the supported units needed and what the contractor provided
11 were the same thing or met the requirements, and that it was
12 being performed to some sort of standard. So, we had to work
13 together really and integrated team.

14 Q And I've now shifted again to the simplified version of the
15 entities listed on this work chart. Does this show the members
16 of Team LOGCAP?

17 A Yes, it does.

18 Q Okay. Could you explain to the Court what these entities
19 are that make up the members of Team LOGCAP. And maybe begin at
20 the bottom left with supporting units?

21 A So, the supporting units were the units that were
22 actually -- excuse me, at the sites. And those units, they
23 would go anywhere from a company or platoon level all the way up
24 to the commanding generals that were in Iraq. So those were
25 units we provided support to. And then the LOGCAP support

MIKE MAYO - DIRECT EXAMINATION

1 officers or LSO's actually worked for the program director of
2 LOGCAP, which was located in Rock Island, but at the top you see
3 a deputy program director.

4 And during this period and the early period was a lady
5 named Janna Weston. And so she was LOGCAP director forward and
6 she facilitated the team. And then of course KBR and then ACOs
7 under DCMA under the DCMA, Defense Contract Management Agency
8 were the ones that issued changes to the task orders and kind of
9 managed the contract.

10 DCMA was delegated the authority to manage the contract by
11 the procuring contracting officer out of Rock Island. Also in
12 DCMA were the QAR's, the quality assurance representatives.

13 Q I'll stop you there before we go any further. To begin,
14 you described LOGCAP deputy program director forward as an
15 individual who was forward deployed from Rock Island, is that
16 right?

17 A Yes.

18 Q Was she part of the military?

19 A Oh, yes. She belonged to a military organization, the Army
20 contracting command and the program director office for LOGCAP
21 are both located in Rock Island and they're both military
22 operations.

23 Q And the supported unit, that's a part of the military?

24 A Yes.

25 Q How about the LOGCAP support officers, is that part of the

MIKE MAYO - DIRECT EXAMINATION

1 military?

2 A Yes.

3 Q DCMA and military contracting officers, are those
4 individuals part of the military?

5 A Yes.

6 Q Now, you briefly touched on earlier a long list of services
7 that came under the LOGCAP III contract. Did KBR provide all of
8 those services at all of the bases in Iraq and Afghanistan?

9 A No.

10 Q How was it decided which services KBR provided under LOGCAP
11 III?

12 A Well, the government decided which services to provide and
13 they issued that direction to KBR in the task order. And in the
14 task order would be an annex, Task Order 139, I know best, it
15 would be an annex that showed the services that would be
16 provided and what sites that service would be provided.

17 Q Mr. Mayo, was there a process in place for how the military
18 gave direction to KBR on which services to provide?

19 A Yes, there was the basic task order, which I already
20 mentioned. And then during the period of performance, the ACL's
21 administrative change letters were issued.

22 Q The process for the military to give direction to KBR, were
23 any of the entities on team LOGCAP, were they involved in that
24 process?

25 A They were all involved in that process.

MIKE MAYO - DIRECT EXAMINATION

1 Q And I think it would be useful if you could explain to the
2 Court how this process worked. And let's just take an example
3 of a new dining facility. That's a service under LOGCAP III?

4 A Yes.

5 Q All right. So, if there's going to be a new dining
6 facility added to the LOGCAP III contract, where does that
7 process start?

8 A Well, the supported unit or the mayor's cell, which is also
9 a supported unit, a military unit would determine they needed a
10 new dining facility maybe because their getting expansion at the
11 camp. So they would get with the LSOs, LOGCAP support officers
12 and together they would write a statement of work.

13 That statement of work, once the LSOs finished it, they
14 would send it back to the supported unit to make sure it met
15 their requirement.

16 Q So that I think if I want to summarize here, you said it
17 starts with the supported unit and goes to the LOGCAP support
18 office, is that right?

19 A Yes.

20 Q And what does the LOGCAP support office do next?

21 A They develop the statement of work.

22 Q And what happens after the LOGCAP support unit develops the
23 statement of work?

24 A They get with the supported unit to make sure it's what the
25 unit wants.

MIKE MAYO - DIRECT EXAMINATION

1 Q Is it fair to say the LOGCAP support unit is sort of
2 translating that operational meeting in the contract statement?

3 A Yes, and also looking to making sure it's in the scope of
4 work.

5 Q So one of the functions that LSO or LOGCAP support officer
6 in your experience takes on is ensuring the request comes within
7 the contract?

8 A Yes.

9 Q So, continuing on with the process, let's say the LOGCAP
10 support officer determines the dining facility is within the
11 scope of the contract, what happens after that?

12 A They send it over to the administrative contracting
13 officer, the ACO.

14 Q And again, that's the committee that presides over here
15 with DCMA?

16 A Yes.

17 Q And what happens then?

18 A The ACO sends it to KBR, a project planning request.

19 Q A project planning request?

20 A Yes.

21 Q What's that?

22 A It's a memo that tells KBR the government wants this
23 service turned on at this site and what we need from you, KBR,
24 is an estimate. And then KBR is given a set time, a schedule in
25 which to provide the estimate.

MIKE MAYO - DIRECT EXAMINATION

1 Q Okay. And what happens next in the process?

2 A KBR prepares the estimate.

3 Q Where does it go from there?

4 A It goes back to ACO and then the ACO and the LSO get
5 together with the support unit to do a tech eval. to make sure
6 it meets the requirement.

7 Q Okay. So let's say, KBR responds to this request for an
8 estimate with an estimate. It goes to DCMA administrative
9 contracting officer. They meet with the LSO and the supported
10 unit, and they're satisfied with it. What happens next?

11 A The supported unit then sends it up through their chain of
12 command to get approval and funding.

13 Q Approval and what, I'm sorry?

14 A And funding.

15 Q So, let's assume they get approval and funding, what
16 happens next?

17 A Comes back down to the ACO who issues KBR a notice to
18 proceed through an administrative change letter.

19 Q And what happens after the DCMA issues administrative
20 change letter or the ACL?

21 A KBR begins to perform the function or the task.

22 Q After the issuance of the ACL giving KBR direction to
23 proceed, is KBR then free to perform without any involvement of
24 the other team members of Team LOGCAP?

25 A No. As I mentioned, the QARs were also in the DCMA. So

MIKE MAYO - DIRECT EXAMINATION

1 the QARs had oversight of the performance, KBR's performance.

2 In addition, the ACO kept track of it, because the ACO issued
3 the guidance. The LSO looked at it, because the LSO developed
4 the statement of work. And then the supporting unit, obviously,
5 who is going to benefit from the dining facility also looked at
6 it.

7 So, KBR was performing work like construction of the dining
8 facilities, which you normally do first to making sure it was
9 all on track.

10 Q And the process we walked through that kind of went through
11 supported unit, LSO, supported unit -- I'm not going to run
12 through it all again. That process that kicked out a
13 administrative change letter, besides an administrative change
14 letter, were there other ways for the government to give KBR
15 written direction to proceed with a service?

16 A Yes. The real base document on any -- on the services is
17 the task order. So the task order tells you what services
18 you're going to provide at what sites. It can also be the
19 initiating document for turning on new services at new sites.

20 So you got the task order and then once the period of
21 performance starts, you get your NTP, your notice to proceed for
22 your task order, then the ACLs are used to makes changes to that
23 task order.

24 Q So some services may be turned on through a task order and
25 others may be through ACLs?

MIKE MAYO - DIRECT EXAMINATION

1 A Yes.

2 Q Now, I want to shift a little bit and talk about waste
3 management and the process you just described. Where in that
4 process is it determined which method of waste management will
5 be used?

6 A It's not determined in that process.

7 Q It's not determined in the process at all?

8 A No.

9 Q When is it determined?

10 A It is determined by the military leadership at various
11 levels, but not within this partnership. And the commanders on
12 the ground make that decision. In the case of waste management,
13 it's usually made at the highest levels.

14 Q Following up on waste management and turning to burn pit
15 service, you're aware that KBR provided burn pit services at
16 certain sites?

17 A I am.

18 Q Who decided at which bases KBR provided burn pit services?

19 A The government did.

20 Q How do you know that?

21 A Because we got the direction on where to operate them.

22 Q Did KBR have discretion to decide to use burn pits without
23 receiving military direction?

24 A I'm sorry, I didn't hear you.

25 Q Did KBR have discretion to decide to use burn pits without

MIKE MAYO - DIRECT EXAMINATION

1 military direction?

2 A Oh, no.

3 Q Why not?

4 A Because KBR's only guidance was military direction.

5 Q Are you familiar with the possible methods of waste
6 disposal that are identified in the LOGCAP III contract?

7 A I think I am, yes.

8 Q Are you familiar with incinerators?

9 A Yes.

10 Q Are you familiar with landfills?

11 A I am.

12 Q Recycling?

13 A Yes.

14 Q And burn pits?

15 A Yes.

16 Q Who decided which method of waste disposal would be
17 utilized under LOGCAP III?

18 A The government.

19 Q Was KBR allowed to install incinerators on its own without
20 direction from the military?

21 A No.

22 Q Why not?

23 A Well, first, we didn't have government direction to do it.

24 The government had to fund it if we did do it. And then there's
25 always the space issue because KBR was not responsible for the

MIKE MAYO - DIRECT EXAMINATION

1 site space.

2 Q Was KBR allowed to dig a landfill on a military base
3 without receiving direction from the military?

4 A No.

5 Q Why not?

6 A For the same reasons.

7 Q Was KBR allowed to set up recycling plant without receiving
8 direction from the military?

9 A No.

10 Q Why not?

11 A For the same reasons, no government direction, no place to
12 store it if we did recycle it. And in the case of recycling,
13 there was nobody to give it to recycle it off the base.

14 Q And with respect to locations of burn pits at each base,
15 who decided where burn pits would be located?

16 A The government did.

17 Q How do you know that?

18 A Because the government -- in most cases, the burn pits were
19 already operating and the government selected the sites.

20 Q Did KBR have the discretion, was KBR allowed to
21 unilaterally move a burn pit from one location to another on a
22 military base?

23 A No.

24 Q Why not?

25 A There was no government direction to move them.

MIKE MAYO - DIRECT EXAMINATION

1 Q Are you familiar with the concept of prohibited items with
2 respect to the burn pits?

3 A Yes.

4 Q What are those?

5 A They are things that the government directed -- gave us in
6 direction on what not to burn.

7 Q And you've maybe gotten ahead of me here, but who decided
8 which items were prohibited items?

9 A The government did.

10 Q How do you know that?

11 A Because we got it in government direction.

12 Q Mr. Mayo, are you aware of any instance in which KBR
13 operated a burn pit without receiving authorization?

14 A No.

15 Q Are you aware of any instance when DCMA accused KBR of
16 having operated a burn pit without authorization?

17 A No.

18 Q Are you aware of anyone from the government accusing KBR of
19 operating a burn pit without authorization?

20 A No.

21 Q Are you aware of any instance where DCMA alleged that the
22 use of burn pits was prohibited by the LOGCAP III contract?

23 A No.

24 MR. RUSSELL: No further questions?

25 THE COURT: Cross.

MIKE MAYO - CROSS-EXAMINATION

1 COURT REPORTER: Your name, ma'am?

2 MS. SMITH: Elizabeth Smith.

3 CROSS-EXAMINATION

4 BY MS. SMITH:

5 Q Good afternoon, Mr. Mayo.

6 A Good afternoon.

7 Q KBR's relationship with the military was defined by the
8 LOGCAP III contract documents, correct?

9 A Yes.

10 Q And the written contract documents, such as the documents
11 you've been discussing today, controlled KBR's performance of
12 service under LOGCAP III, correct?

13 A I didn't understand the question.

14 Q The written contract documents, they controlled KBR's
15 performance of services under LOGCAP III?

16 A Yes.

17 Q And only the contracting officer could give KBR contract
18 directions, correct?

19 A Yes.

20 Q And that --

21 A I assume when you say, contracting officer, you're talking
22 about administrative contracting officer.

23 Q Right.

24 And that contract direction would be in writing, correct?

25 A Yes.

MIKE MAYO - CROSS-EXAMINATION

1 Q And that direction was in the form of letters of technical
2 direction or LOTD; an ACL or administrative contracting letters,
3 right?

4 A And also the task order.

5 Q So when the military wanted KBR to take on a task, KBR made
6 sure that the formal LOGCAP process was followed, is that right?

7 A Yes.

8 Q And as far as you're aware, KBR only started working on a
9 contract if they had written direction from the ACO in hand or
10 if the ACO had told KBR that the written direction was being
11 issued, is that right?

12 A Yes.

13 Q And to the best of your knowledge, KBR was pretty good
14 about making sure that the formal process was followed, correct?

15 A Yes, ma'am.

16 Q The on-site military commanders did not have the power to
17 bypass the LOGCAP process, right?

18 A That's true.

19 Q And the military commander didn't have the authority to
20 direct KBR's work?

21 A That's true.

22 Q And you're aware of no instance when KBR performed a task
23 requested by the commander without direction from the ACO, is
24 that right?

25 A I'm not aware of any.

MIKE MAYO - CROSS-EXAMINATION

1 Q A military request for KBR to run a burn pit would have to
2 go through the same formal LOGCAP process as other requests,
3 right?

4 A Yes.

5 Q And that direction for KBR to run the burn pit would have
6 been issued by the ACO in writing; is that correct?

7 A Yes. In the case of the task order, though, sometimes the
8 ACO didn't issue that. The procuring officer did.

9 Q Okay. But it would have been in writing?

10 A It would have been in writing and a government employee,
11 yeah.

12 Q In instances when it came to your attention that a task was
13 being done by KBR that was not in conformance with the
14 government's formal direction under contract, your policy was to
15 stop it and counsel the site manager; is that correct?

16 A There were different levels of evaluations and so, I -- as
17 the PPM, I wasn't involved in all of them because I wasn't at
18 every site. There was multiple site.

19 So at site level, if -- there were two methods, KBR had
20 some internal quality control program. And if they found
21 something wrong, they would issue -- they would either correct
22 it on the spot if it could be corrected, the supervisors would.
23 Or else they would issue what was known as a corrective, I think
24 it's Management Implementation Plan, a CMIP.

25 And then on the government side QARs would do inspections

MIKE MAYO - CROSS-EXAMINATION

1 and they would issue a CAR, a Corrective Action Request if it
2 could not be corrected.

3 So getting back to your question, I wasn't involved in any
4 of, you know, that level of detail, but some of them I knew
5 about, some were handled and I did not know about.

6 Q That QAQC, KBR's QAQC that you're referring to?

7 A Right.

8 Q They were responsible to make sure -- they had first line
9 responsibility to make sure that KBR was performing at contract,
10 in conformance with the standard, is that right?

11 A The supervisor had the initial responsibility, because it
12 was his job to make sure things were done right and QA folks QC
13 folks, quality control folks would go behind them to make sure
14 things are performed properly.

15 Q And that's the KBR supervisor; is that correct?

16 A Yes, ma'am.

17 Q KBR would not take on a task that was outside the scope of
18 the contract, correct?

19 A That's correct.

20 Q And if the government tried to give KBR a task that was
21 outside the scope of the contract, KBR would push back on that,
22 correct?

23 A That part -- yes, short answer, yes.

24 Q And if it -- when an issue arose regarding whether KBR
25 could take on a task, you would generally have a discussion with

MIKE MAYO - CROSS-EXAMINATION

1 KBR management in Houston, is that right?

2 A Not all the time, because there are many tasks that KBR
3 management had no interest in because it was just normal
4 business. But I got to get back to your other question, your
5 first question, because KBR -- if the government wanted us to do
6 something and you saw that Team LOGCAP, right. There would be
7 this discussion among all those players about, number one, the
8 LSO would determine whether or not it was a scope. We would
9 discuss about our capabilities. But in the end, it was -- all
10 that discussion occurred before we got any direction.

11 Q But were there occasions when you would have a discussion
12 with KBR management in Houston about a task?

13 A Very seldom did I do that.

14 Q If it was one of those occasion, would you all try to come
15 to a consensus about whether or not to take on the task?

16 A Yeah. I mean, if it was something that was outside our
17 norm, we might do that, but I can't remember. I mean, I didn't
18 have to build a consensus because during my tenure as principal
19 program manager there really wasn't any that I can remember
20 sitting here.

21 Q Do you recall giving your deposition in, when was it,
22 September, 2016, September 1st, 2016?

23 A Yes, ma'am. Well, what do you want me to recall? I'm
24 sorry.

25 Q I'm getting there.

MIKE MAYO - CROSS-EXAMINATION

1 And you recall at the beginning of the deposition, you were
2 sworn in and you swore to tell the truth within that deposition,
3 correct?

4 A Yes.

5 Q And the court reporter was there and she was taking down
6 everything everybody was saying?

7 A Sure.

8 Q Okay.

9 MS. SMITH: May I approach, Your Honor?

10 THE COURT: You may.

11 BY MS. SMITH:

12 Q So, if you can turn to page 24, line 2.

13 A Okay.

14 Q So, you were -- let's see, you were asked, Could you tell
15 the military that KBR was not going to operate a burn pit
16 because you perceived it -- do you see that?

17 A Yes, ma'am, I do.

18 Q And so you responded dining facility or something there
19 would always be discussion before decision was made. And that
20 discussion with be with leadership in Houston?

21 A That's true.

22 Q And the next question, so I'm correct in understanding from
23 your answer that the decision-making around what task you're
24 willing to take, KBR was willing to take on for the government
25 was one of these issues you would elevate up to the Houston

MIKE MAYO - CROSS-EXAMINATION

1 management?

2 A Yes, ma'am. If it wasn't one we were already doing, but,
3 yes, ma'am, I got it.

4 Q Your answer for discussion, yes.

5 And then you were asked, and when you say for discussion,
6 does that mean at the end of the day, the buck stopped with you
7 and you were the decision-maker?

8 And you answered, there would normally be consensus between
9 all of us as to whether or not to take it on. Do you see that?

10 A Yes, ma'am.

11 Q And then you were asked, absent a consensus, did you have
12 the power to --

13 THE COURT: Counsel, why are you just reading this
14 into the record when you could just ask him these questions.
15 Has he said something today inconsistent with this?

16 MS. SMITH: He did.

17 THE COURT: Well, why don't you point to the
18 inconsistency and ask him about it?

19 MS. SMITH: Well, he just testified that he didn't
20 remember having to talk to Houston about issues regarding tasks
21 that the government may have asked KBR to perform that KBR
22 needed to discuss.

23 THE COURT: Right.

24 MS. SMITH: And that's why I'm showing him this
25 section.

MIKE MAYO - CROSS-EXAMINATION

1 THE COURT: All right. You may proceed.

2 THE WITNESS: Can I go back to that?

3 BY MS. SMITH:

4 Q Let me ask you one more question, if I could. It's on the
5 same line. So, if it -- if it was an occasion where you went to
6 Houston to discuss this and the views were split in terms of the
7 folks you were talking to in Houston, you would take the option
8 of not doing the task, is that right?

9 A We never refused to do a task once we were directed by the
10 government to do it.

11 Q So back on page 24 of your deposition transcript starting
12 line 21?

13 A Yes.

14 Q And it says, and absent a consensus, did you have the power
15 to simply make the decision if views were split?

16 And you answered, usually if views were split, we took the
17 option of not doing it.

18 Is that how you testified at your deposition?

19 A That's what I said, but can I go back to this, because you
20 got to start with line 19.

21 During your tenure, did KBR ever refuse to take on a
22 project?

23 And I said, I responded, I couldn't remember any.

24 And then I was given a hypothetical that led into where you
25 started, because we never -- I never had that option, that

MIKE MAYO - CROSS-EXAMINATION

1 opportunity to ask KBR management to do anything.

2 Q You didn't answer the question as a hypothetical, did you?

3 A Pardon me?

4 Q You said, we took the option of not doing it. Sounds like
5 something that actually happened.

6 A I never asked them what to do or not do. I was just
7 describing a process if I had to do that.

8 Q Okay. Under LOGCAP III, KBR was responsible for
9 supervising its employees, correct?

10 A Yes, ma'am.

11 Q And members of the supported unit couldn't issue orders to
12 KBR employees, right? Members of the supported unit couldn't
13 issue orders?

14 A That's right.

15 Q KBR employees were not in the military chain of command; is
16 that correct?

17 A They were what?

18 Q KBR employees were not in the military chain of command?

19 A That's true.

20 Q And the majority of KBR's work force in theater consisted
21 of subcontractors, is that right?

22 A Yes, ma'am.

23 Q KBR was responsible for the supervision of its
24 subcontractors, right?

25 A Yes, ma'am.

MIKE MAYO - CROSS-EXAMINATION

1 Q And the government wasn't a party to KBR subcontracts, is
2 that correct?

3 A That's true.

4 Q And the supported unit couldn't issue orders to KBR
5 subcontractors, could they?

6 A That's true.

7 Q KBR was ultimately responsible for insuring the quality of
8 the work that was performed by the subcontractors, KBR
9 subcontractors, is that right?

10 A Yes, ma'am.

11 Q And the subcontractors were from a variety of countries; is
12 that correct?

13 A Were from a variety of countries?

14 Q Yes.

15 A Yes, ma'am, they were.

16 Q One time I think you testified in your deposition there
17 were about 82?

18 A About 82 countries, yes, ma'am.

19 Q And some of those subcontractors spoke language other than
20 English, is that right?

21 A Yes, ma'am.

22 Q Did KBR take any initiative to translate into other
23 languages any of the KBR SOP, Standard Operating Procedures
24 about the burn pit?

25 A Ma'am, I do not know. I do not remember.

MIKE MAYO - CROSS-EXAMINATION

1 Q Now, DCMA's roles in the LOGCAP III contract was that of
2 the contract manager, right?

3 A DCMA was the contract manager, yes, ma'am.

4 Q They did not supervise KBR employees in performing their
5 tasks under the contract, right?

6 A That's true.

7 Q As contract manager, DCMA's role was to ensure KBR was
8 performing the contract to the standards incorporated in the
9 contract, is that right?

10 A Would you say that again?

11 Q Sure.

12 A I'm having a hard time hearing some of --

13 Q Okay. I'll get a little closer to the mic.

14 As a contract manager, DCMA's role was to ensure that KBR
15 was performing the contract to the standards incorporated into
16 the contract, is that right?

17 A Yes, ma'am.

18 Q DCMA provided an oversight function as dictated by the
19 contract?

20 A Yes, ma'am.

21 Q And the LOGCAP support officers that you spoke about in
22 your testimony earlier, they didn't supervise KBR employees
23 either, correct?

24 A That's true.

25 Q They didn't have any authority to direct KBR, is that

MIKE MAYO - CROSS-EXAMINATION

1 right?

2 A That's true.

3 Q You never had issues regarding KBR's waste management and
4 disposal tasking come to your attention, did you?

5 A No, I -- nothing came to my attention concerning waste
6 management. I think that's what you asked.

7 Q Correct. And you don't recall any specific visit to any
8 burn pits during your tenure in Iraq; is that correct?

9 A When I was a PPM, I would visit sites. And the site
10 managers determined where I would go visit. And some places I
11 may have gone to a burn pit, some I didn't. It was so long ago,
12 I don't remember every place I stopped.

13 Q You don't have a specific recollection of any burn pits?

14 A No, ma'am.

15 Q And you don't recall ever having occasion to look directly
16 at what KBR was burning in the burn pit; is that correct?

17 A No, ma'am.

18 MS. SMITH: I don't have any other questions. Thank
19 you.

20 THE WITNESS: Thank you.

21 MR. RUSSELL: No redirect, Your Honor.

22 THE COURT: You may step down, sir. Thank you very
23 much.

24 (Witness excused.)

25 THE COURT: Call your next witness.

MATTHEW HERSCH - DIRECT EXAMINATION

1 MR. JOHNSON: KBR calls Commander Matt Hersch.

2 MATTHEW JAMES HERSCH, DEFENSE WITNESS, SWORN

3 THE DEPUTY CLERK: Sir, please speak directly into the
4 microphone. State your name, please spell your first and last
5 name.

6 THE WITNESS: Yes, ma'am. My name is Matthew James
7 Hersch. First name M-A-T-T-H-E-W; last name Hersch,
8 H-E-R-S-C-H.

9 THE DEPUTY CLERK: Thank you.

10 MR. JOHNSON: Your Honor, may I approach with a couple
11 demonstratives?

12 THE COURT: You may.

13 DIRECT EXAMINATION

14 BY MR. JOHNSON:

15 Q Good morning, Mr. Hersch. How are you today?

16 A Fine counsel.

17 Q Good afternoon.

18 Before we get started, can you please just give the Court a
19 brief statement, if you will, of your personal and military
20 background?

21 A Yes, sir.

22 Your Honor, Matthew Hersch, 59, lived in Erie, Pennsylvania
23 all my life; married 35 years, six children, ten grandchildren.
24 After I graduated college in 1980, for the next 30 years, my
25 civilian career, I worked for two companies.

MATTHEW HERSCH - DIRECT EXAMINATION

1 The first one for five years was a company that specialized
2 in steel fabrication and erection. I was a field supervisor for
3 the iron worker crews during those five years. I had about a
4 hundred iron workers that worked various project, mainly
5 construction, plant shut down. During the course of that job, I
6 had to coordinate all the safety and logistics of those jobs.

7 For the next 25 years, I worked for a Fortune 500 company
8 that manufactured industrial construction projects, products.
9 And during the course of those 25 years, I started entry level
10 in civil service and then moved to manager of manufacturing
11 wherein that position I was in control of all contracts for
12 vendors, union negotiations, all quality assurance, all the
13 logistics going out to a hundred service centers throughout the
14 country and the world for our products.

15 And after 25 years there, I worked for a hospital for five
16 years as a logistics manager in control of all the supplies that
17 worked through that hospital. And I -- anything that moved in
18 the hospital, including patient transport, I had responsibility
19 for.

20 In 1992 at the age of 34, I had a pretty perfect life and I
21 was very appreciative of that life and I wanted to give a little
22 bit back. So I was able to come across a program that the Navy
23 Reserve was having where they were looking for older citizens
24 that had college degrees and good work experience.

25 And so, I went into that program as an enlisted person. I

MATTHEW HERSCH - DIRECT EXAMINATION

1 was -- my recruiter got creative and I came in as a steelworker
2 second class and E-5 rate, and was assigned to mobile
3 construction, Battalion 23.

4 Two years after that, I put in for a direct officer
5 commission in the United States Navy Supply Core, which was
6 granted. Through the course of my reserve career, I was in a
7 number of reserve units, but on four occasions, I was recalled
8 to active duty.

9 In 2003, I was sent to Naples, Italy in support of three
10 aircraft carrier strike groups. I was an assistance ordnance
11 officer.

12 In 2005, I was volunteered and recalled back to active duty
13 by DCMA in Iraq. In 2009 and '10, I volunteered and was
14 recalled to active duty to Afghanistan and served in the J-4
15 shop for contract management oversight.

16 And then in 2013 through 2016, I volunteered and was
17 recalled to active duty, and went to the Horn of Africa where I
18 eventually ended up serving as the OIC at forward operating
19 location in Africa.

20 Last summer, July 12, after 22 and-a-half years, I retired
21 from the Navy.

22 Q Okay. Thank you, Mr. Hersch. There's a lot of talk about
23 there, but we're just going to focus on one very narrow piece,
24 which is your 2005 deployment with DCMA. So I understand you
25 were in the supply core. How did it come about that a supply

MATTHEW HERSCH - DIRECT EXAMINATION

1 core officer in the Navy ended up working as a DCMA Quality
2 Assurance Representative?

3 A Yes, at the time within the reserve unit I was in, which
4 was a expedition or logistics unit, the notice was put out that
5 DCMA, Defense Contract Management Agency was looking for quality
6 assurance representatives. And because of my background, I
7 thought it would be a good thing for me to voluntary and do --

8 Q And did you -- and so you obviously raised your hand and you
9 were selected. Did you receive any training from DCMA in
10 preparation for your deployment?

11 A I did. I received ATN training orders to attend training.
12 It was either one or two weeks long. I don't remember the
13 location, but it was held by DCMA. And I remember a lot of it
14 was presentation of what we were going to do when we went in
15 country. And also, there were a lot of QARs that had been in
16 country and were talking about their experiences.

17 Q At that point, what did you learn? What is the role of a
18 quality assurance representative from DCMA?

19 A Well, in this case, because I know it was LOGCAP-based, we
20 were told that we would have inspection sheets and that we would
21 go to our assigned FOBs, in my case, and make sure that KBR was
22 adhering to the contract and adhering to those check sheets.

23 Q And when you deployed, where did you go?

24 A I went to Iraq.

25 Q Where in Iraq?

MATTHEW HERSCH - DIRECT EXAMINATION

1 A I was assigned to FOB, Forward Operating Base Bucca and
2 then just north of Bucca, there was another base, Al Basra.

3 Q Now, if we look at this map here, is that an accurate
4 depiction of where Camp Bucca is in Iraq?

5 A Yes.

6 Q And go to the next slide. These are some photographs of
7 Camp Bucca. Do those accurately reflect at a general level what
8 Camp Bucca looked like?

9 A Yes.

10 Q And what military operations were occurring at Camp Bucca,
11 do you know?

12 A Yes, the primary location was a enemy prisoner locale.

13 Q Can you describe what it was like at Camp Bucca?

14 A It was hot, the moonscape, no green vegetation, high pace
15 tempo.

16 Q And you mentioned another base where you had
17 responsibilities. What was the name of that base?

18 A It was FOB Al Basra. I don't know if that was the
19 technical term, but it was in Al Basra.

20 Q Where is that relative to Camp Bucca?

21 A It is two hours due north and sits on it the Iraq/Iran
22 border.

23 Q And were you also QAR at the Al Basra?

24 A Yes.

25 Q Same responsibilities?

MATTHEW HERSCH - DIRECT EXAMINATION

1 A Yes.

2 Q Can you give us a little bit of understanding as to where
3 do you fit in the DCMA chain of command? Did you have any
4 subordinates below you?

5 A I did not.

6 Q Who did you report to?

7 A I reported to the -- there was an ACO on the camp and so I
8 thought I reported to her, but there were other DCMA elements
9 outside of the camp in Kuwait that I reported to also.

10 Q And so then the ACO you're talking about is the
11 administrative contracting officer?

12 A Yes.

13 Q And what rank was that person?

14 A Lieutenant Colonel.

15 Q And what was your rank at the time?

16 A Lieutenant Commander, which is 04 versus 05.

17 Q Now, during your deposition, I know you -- hand you a map
18 of Camp Bucca and I'm now showing you a PowerPoint version of
19 that map. Why don't you take a look at it and let me know if
20 you think it accurately reflects your understanding of the
21 layout of Camp Bucca when you were deployed there in 2005?

22 A It generally does look like Camp Bucca, yes.

23 Q Okay. Is this roughly consistent with what you drew during
24 your deposition?

25 A Yes, sir.

MATTHEW HERSCH - DIRECT EXAMINATION

1 Q Now, let's use this map of Camp Bucca and let's just talk a
2 little bit about a day in the life of a QAR. So as a DCMA
3 Quality Assurance Representative on Camp Bucca, what areas were
4 you inspecting?

5 A As you can see by the map, it wasn't a very large FOB, so
6 it's 1 mile by 1 mile. I would get up every day and I had
7 probably ten to 15 different inspection areas that I would go
8 and do my job. They would include the DFAC, the LSA.

9 Q Let me stop you on the acronym. Sorry, I don't mean to cut
10 you off.

11 DFAC is the dining facility?

12 A The dining facility, that's correct.

13 Q The LSA, which is the living area where our troops were. I
14 had Vectra control, which in this case was animal control.
15 Hazardous waste, latrines, burn pit, water purification. Those
16 were -- there's more, but those were -- those were
17 representative of what I did.

18 A typical day was to get up and just start walking around
19 the FOB. It was so small that everything I did, which a typical
20 day was ten to twelve hours, was visiting with my customers at
21 the time, which were the sailors, Marines, Air Force and Army
22 folks that were there. And I made it known what my position
23 was.

24 And so, I mean, if I went in the latrine, I was inspecting
25 the latrine. If I went to the showers, I was inspecting the

MATTHEW HERSCH - DIRECT EXAMINATION

1 showers. So I became known as the, Sheriff of Bucca?

2 Q Your badge?

3 A I did not get a badge.

4 Q You listed a bunch of areas you reviewed. Did you have
5 checklists for DCMA of areas that you reviewed?

6 A Yes.

7 Q Just to be clear, did you personally create those
8 checklists?

9 A I did not.

10 Q Do you know who at DCMA created those checklists?

11 A I do not.

12 Q Were they similar to the checklists you were trained on
13 before you deployed?

14 A Yes.

15 Q Did you inspect items outside of the checklist? That is,
16 did you have a less formal method of reviewing things as well?

17 A No. I mean, the checklists were in my head. And pretty
18 much, that was the lane that I swam in and stayed in.

19 Q So, let's do an example just to, sort of, make this clear.

20 So, we have the dining facility on here. What are some examples
21 of some of the things on the dining facility checklist that you
22 would be going through and looking at when you were inspecting a
23 dining facility?

24 A General cleanliness, but there were a lot of areas where --
25 I went in the food preparation areas and there were specific

MATTHEW HERSCH - DIRECT EXAMINATION

1 temperatures that had to be maintained and different
2 temperatures the food had to be cooked at. So, I -- another
3 area what was important and every time I ate at the DFAC, I was
4 doing an informal audit. But I would do formal audits that were
5 unannounced. But one of the big things there were third-country
6 nationals were preparing the food in the DFAC and I had the
7 right to go and review their living situation. So, I would just
8 arbitrarily pick an employee and say, I want to see that
9 person's hooch.

10 Q And a hooch is what?

11 A A place where we slept.

12 Q So you inspect not only the dining facility, but also the
13 living quarters of people who worked in the dining facility?

14 A It was and that was on the checklist.

15 Q Now, you mentioned, sort of, informal reviews. Can you
16 describe a little bit your day-to-day interaction with KBR at
17 Camp Bucca?

18 A Yes. I had a radio and that radio was on one frequency
19 that I could talk to my ACO, LSO counterpart and supervisors at
20 KBR. So, if I saw something that I felt needed to be brought to
21 attention, I would just get on the radio and talk to my KBR
22 counterparts about it.

23 Q What happened when you informed KBR that there was
24 something that needed to be addressed?

25 A An example would be -- you've got a picture of the tent

MATTHEW HERSCH - DIRECT EXAMINATION

1 city there and there's probably about 20 tents. And any time we
2 had new forces coming in and new forces coming out, the hardened
3 military housing folks would moved into the tents and then their
4 replacements would move into their hard hooches. But the tent
5 city was not always occupied, but one of the things on the
6 checklist was to make sure that the stakes were properly driven
7 into the ground and the ropes were tied properly. Because there
8 were incidents at other FOBs where tents caught on fire and
9 there was loss of life.

10 So, an example would be walking through a tent city that
11 had no one in it. I might observe tent number 22 had three
12 lines that weren't attached, I would make an observation. I
13 would call my KBR counterparts and say, this is my observation
14 and they would come and take care of it.

15 Q And then would you follow up to make sure it got fixed?

16 A Usually -- I mean, because of the -- I would because it was
17 such a small place. I mean, I would know it got done, because I
18 inspected those tents every day and maybe even twice a day.

19 Q Now, did you have any responsibility outside of inspecting
20 KBR for contract negotiations or other interactions between KBR?

21 A No.

22 Q What about your responsibilities at Al Basra, was it
23 similar to what you were doing at Camp Bucca?

24 A Yes.

25 Q You had checklists for Al Basra?

MATTHEW HERSCH - DIRECT EXAMINATION

1 A Yes.

2 Q Was KBR performing services there?

3 A Yes.

4 Q I want to talk specifically about the burn pit depicted
5 here on the graphic in front of you?

6 A Yes.

7 Q Was there in fact a burn pit here at Camp Bucca?

8 A Yes.

9 Q And the way it's depicted here, it's outside of the base.
10 Is that accurate?

11 A Yes.

12 Q How far outside of the base do you recall it being?

13 A Yeah, 400 meters looks right.

14 Q Did you have a checklist for the burn pit?

15 A I did.

16 Q Was that one of the DCMA created checklists

17 A Yes.

18 Q And do you remember what items on the burn pit checklist
19 you were supposed to look for?

20 A Yes, ordnance unexploded ordnance. And hazardous
21 materials.

22 Q Anything else you recall?

23 A No.

24 Q And when you walked -- did you actually go to the burn pits
25 to inspect or did you look at it from the base?

MATTHEW HERSCH - DIRECT EXAMINATION

1 A I physically went to the burn pit.

2 Q How did you get there?

3 A There was a force protection issue. I mentioned all of my
4 audits were unannounced. In the case of going to the burn pit,
5 I had to secure security forces to go out with me. In this case
6 the security forces were three Up Armored Humvees. I would have
7 to give them notice because they were doing other things. So
8 usually within an hour of me alerting force protection, I could
9 roll out to that.

10 So there was a gate to the right of No Man's Land there.
11 And we would roll out at a gate. They would do a 360 and then
12 the burn pit was actually burning while I physically walked
13 through it. And I had a big stick I just poked. Took me half
14 an hour to a hour to do a typical inspection.

15 Q Ask you a couple questions about that. Who were the
16 individuals that were manning these Humvees, that were providing
17 security when you went outside the wire?

18 A U.S. Army soldiers.

19 Q And you mentioned you had a big stick with you?

20 A Yes.

21 Q And why did you bring a big stick with you?

22 A Because if something was burning and I had to break into it
23 to see. And one of the things was Vectra control. So in that
24 case, I had a 9-millimeter and if I saw a rats or anything like
25 that, I had permission to shoot them.

MATTHEW HERSCH - DIRECT EXAMINATION

1 Q So you physically -- you made a gesture there with your
2 hand. Did you physically go down and poke into the burn pits to
3 see what was there?

4 A Very much so, yes.

5 Q Can you describe what the burn pit was like when you would
6 go down there and poke through it?

7 A It was hot, it stunk and it was unpleasant.

8 Q How often were you inspecting the burn pit?

9 A Once a week.

10 Q And again, using that same checklist every time?

11 A Yes.

12 Q If you noticed anything that was prohibited or seemed
13 dangerous, did you put it on your checklist?

14 A I would.

15 Q Did you ever notice anything that seemed dangerous or
16 hazardous that belonged on your checklist?

17 A I don't recall specifically, but for some reason,
18 batteries, small batteries stick out in my recollection. So I
19 might have found batteries and I might have noted those on the
20 checklist.

21 Q Did you ever file any reports or have any other
22 conversations with people outside of the checklist about
23 concerns regarding the burn pit?

24 A No.

25 Q Was there a burn pit at Al Basra, the other base where you

MATTHEW HERSCH - DIRECT EXAMINATION

1 worked?

2 A I don't remember. Al Basra was even smaller than Bucca.

3 Al Basra was downtown Al Basra. We called it Fort Apache. So

4 it was half -- probably a quarter of the size of Bucca and I

5 just don't remember. And I went to Al Basra once a month and I

6 was just there probably two days. So I just don't remember a

7 burn pit.

8 Q Do you feel that you were successfully able to go out and

9 inspect the burn pit and evaluate what was happening there?

10 A I did, because the checklist was specific and that was the

11 lane I kept in.

12 Q And when you were out there, did you ever see anybody

13 actually operating the burn pit?

14 A I did not.

15 Q So your inspection was limited to just what was in and

16 happening in the burn pit?

17 A Yes.

18 Q Did anybody ever have a discussion with you from DCMA about

19 whether or not KBR or another contractor was authorized to

20 operate the burn pit at Camp Bucca?

21 A No.

22 Q Did you ever conduct inspections of things that were

23 unauthorized?

24 A No.

25 Q In your experience at Camp Bucca, were there ever instances

MATTHEW HERSCH - CROSS-EXAMINATION

1 where contractors were performing unauthorized work?

2 A No.

3 Q Thank you, Mr. Hersch. I have no further questions.

4 THE COURT: We've been going for two hours, so we'll
5 take a break until 3:30 and continue from there.

6 And, counsel, what about the witness that's in
7 Virginia?

8 MR. MATTHEWS: To my knowledge, he is on his way.
9 After this witness --

10 THE COURT: We might be able to get him in.
11 Otherwise, we'll squeeze him in tomorrow.

12 All right. See you at 3:30.

13 THE DEPUTY CLERK: All rise. This Honorable Court
14 stands in recess until 3:30.

15 (Brief recess.)

16 THE COURT: All right. Ready for cross of the
17 witness.

18 CROSS-EXAMINATION

19 BY MS. SALZBERG:

20 Q Good afternoon.

21 A Good afternoon, counsel.

22 Q You mention you were deployed to Iraq in 2005; is that
23 correct?

24 A Yes, ma'am.

25 Q Do you recall what month you deployed?

MATTHEW HERSCH - CROSS-EXAMINATION

1 A June.

2 Q And you were there no later than about November, 2005; is
3 that correct?

4 A Yes.

5 Q And so you're testifying only as to your knowledge from
6 that six-month period; is that correct?

7 A Yes.

8 Q And your testimony is limited to FOB Bucca and Al Basra; is
9 that correct?

10 A Yes.

11 Q During your time in Iraq, you served as a QARs.

12 A Yes.

13 Q And during that time, you did not serve as ACO?

14 A I did not.

15 Q ACO responsibilities and authority are very different from
16 a QARs; is that correct?

17 A Yes.

18 Q You mentioned before you went to Bucca you went to a
19 training session that lasted about one, maybe two weeks?

20 A Yes.

21 Q And during that training, you were taught that as a QARs,
22 you were limited to the lane you were to swim in; is that
23 correct?

24 THE COURT: Please speak closer to the mic. I can't
25 hear you.

MATTHEW HERSCH - CROSS-EXAMINATION

1 MS. SALZBERG: Sorry, Your Honor.

2 BY THE COURT:

3 Q You were taught, for example, that QARs do not award
4 anything, correct?

5 A Yes.

6 Q You were also taught, for example, that QARs do not approve
7 anything?

8 A Yes.

9 Q And you mentioned you had an ACO that you reported to at
10 Bucca?

11 A I had an ACO I worked with, yes.

12 Q And when you arrived at Bucca, the ACO there told you that
13 you couldn't award anything and you couldn't influence any
14 awards, is that right?

15 A I don't remember her specifically telling me that, but it
16 was my understanding I could not.

17 Q And in fact, during your time as a QARs, you did not award
18 or approve any tasks, correct?

19 A I did not.

20 Q And before going to Iraq or during your time in Iraq, you
21 never read the LOGCAP III contract, correct?

22 A I did not.

23 Q And before going to Iraq or during your time in Iraq, you
24 never read the LOGCAP III task order or statements of orders,
25 correct?

MATTHEW HERSCH - CROSS-EXAMINATION

1 A I remember having access to documents. I don't know if
2 they were the LOGCAP documents, but the ACO was a good
3 communicator. So I don't know if I answered your question.

4 Q But you don't remember ever reading any task order or
5 statement of work, correct?

6 A I know what a task order is. I've seen a task order, so I
7 would have had to have read it. It would have been after the
8 ACO would have done her job and made we aware that something was
9 happening that would come into my purview as a QARs.

10 Q And that's a task order, not a LOTD or --

11 A You're using a term I'm little more familiar with, the last
12 term.

13 Q May have been a LOTD?

14 A It probably was.

15 Q Okay. And you mentioned when you were arrived at Bucca,
16 your predecessor QAR gave you checklists he had been using?

17 A Yes.

18 Q And you don't know at all who developed this checklist,
19 correct?

20 A I do not.

21 Q And you don't know how the checklists were developed?

22 A I do not.

23 Q And you did not look behind the checklist to research what
24 the basis of the items on the checklist was?

25 A No, ma'am.

MATTHEW HERSCH - CROSS-EXAMINATION

1 Q And you don't recall seeing a DCMA logo on the checklist,
2 correct?

3 A I do not.

4 Q And as a QARs, you only checked the items for which you had
5 a checklist, correct?

6 A Yes.

7 Q So you generally would not -- for AOC, KBR's response to
8 administrative change letter, correct?

9 A I'm familiar with that term, but I -- it wouldn't be
10 something I would look at.

11 Q It wouldn't be something that could be checked with a
12 checklist. That would be outside your lane?

13 A No.

14 Q And you never talked to KBR employees about their
15 performance, correct?

16 A I was in constant contact with KBR employees and I'm a
17 glasses half full type person. So I would compliment them on
18 work that I felt was good. So, I mean, that's how I interacted
19 with them.

20 Q Do you remember doing a deposition in this case?

21 A Yes, I do remember my deposition.

22 Q You were asked questions about how often did you have
23 conversations with KBR employees about their performance. Do
24 you remember that?

25 A Yeah, yeah. And I thought your question was more general,

MATTHEW HERSCH - CROSS-EXAMINATION

1 did I have conversations with KBR employees. And my answer
2 would be, I had constant conversations with them. As it relates
3 to job performance, did I in any way evaluate them in a formal
4 manner? I did not.

5 Q I think you testified previously you had zero conversations
6 with KBR employees about their performance. Does that sound
7 right?

8 A If the question was asked, did I -- did I do employee
9 appraisals on their work? The answer is, I did not, that wasn't
10 my authority. But was I in conversation with KBR employees
11 24/7? Yes, I was.

12 Q You mentioned you're not in a position to evaluate KBR
13 employees, correct?

14 A Not from a job performance standpoint, no.

15 Q And you could not give KBR employees work instruction or
16 guidance in any way, correct?

17 A I could not.

18 Q And you played no role in training KBR employees, correct?

19 A I did not.

20 Q And that was KBR's responsibility, correct?

21 A My -- I can't assume anything, so I don't know.

22 Q You had no authority to discipline or terminate KBR
23 employees or subcontractors?

24 A I'm sorry. The first part of the question?

25 Q You had no authority to discipline or terminate KBR

MATTHEW HERSCH - CROSS-EXAMINATION

1 employees or contractors?

2 A That's correct, I did not have the authority to do that.

3 Q Do you know if that was KBR's responsibility?

4 A It could only be an assumption on my part, so I don't know.

5 Q And you could not give KBR a direct order, correct?

6 A I could not.

7 Q You could not decide which KBR employees did which task?

8 A Could not.

9 Q And I think you testified before, you don't recall there
10 being any mayor cell in the military outside Bucca, is that
11 right?

12 A A mayor's cell.

13 Q Mm-hmm.

14 A I know what a mayor cell is?

15 COURT REPORTER: Could you spell that for me please?

16 THE WITNESS: As in a city mayor, cell.

17 I know we had mayors, Iraq, prisoner of war. Mayors
18 of each of the specific holding facilities, but --

19 BY MS. SALZBERG:

20 Q And there was no military person that you know of in charge
21 of resolving logistical issues on the base?

22 A There was an LSO officer and the LSO officer was an Army
23 major and worked in the same office as the ACO and I worked in.

24 MS. SALZBERG: May I, Your Honor?

25 THE COURT: You may.

MATTHEW HERSCH - CROSS-EXAMINATION

1 COURT REPORTER: I'm sorry, I didn't hear you.

2 THE COURT: You have to speak up.

3 BY MS. SALZBERG:

4 Q This is a copy of your deposition transcript from
5 September 12th in this case. And I'm just looking -- turning to
6 page 57.

7 A Which appears on my screen, yes.

8 Q And I think at that time you were asked, was there a
9 military person in charge of resolving logistical issues on the
10 base?

11 You said, not that I know, no.

12 A It's been 12 years since I served at Bucca and through this
13 process, I remember more and there was an LSO officer. And so I
14 know she worked a lot of logistical concerns for the Army. So I
15 would say that that's what I said in the deposition, but I
16 remember an LSO officer at Camp Bucca.

17 Q And turning to, and you'd go out to check on the burn pit.
18 It was up to you to decide how often you would check on that the
19 burn pit. It wasn't a prescribed time or schedule, is that
20 right?

21 A Yes.

22 Q And the burn pit was operated by KBR, correct?

23 A Yes.

24 Q And you never talked to any KBR employees at the burn pit,
25 correct?

MATTHEW HERSCH - CROSS-EXAMINATION

1 A I did not.

2 Q When you'd go out there, you never saw any people out there
3 working?

4 A I did not.

5 Q So, when you mentioned communicating with KBR, those
6 communications were not with people who were working in the burn
7 pit?

8 A No.

9 Q And you don't know what the schedule was for KBR employees
10 or subcontractors working in the burn pit, correct?

11 A No.

12 Q And you don't know why you didn't see anyone out there when
13 you would visit it, correct?

14 A My observation was it was a force protection issue because
15 when I went out as an individual, I'd have three Up Armored
16 Humvees accompanying me.

17 Q Did you testify in your deposition that you didn't know why
18 you didn't see anyone out there?

19 A I remember in my deposition stating that there was no one
20 out there. The "why" behind it, I don't think I said anything
21 in my deposition about the "why".

22 Q If I could, if you could just look to page 88, please.

23 A I have 87 on my screen. You want me to go to 88? And
24 it's, okay, 88.

25 Q I think -- if you look down at line 6, it says, do you know

MATTHEW HERSCH - CROSS-EXAMINATION

1 what their schedule was or why you didn't see them. And then
2 you look down at line 10, it says, I don't know.

3 A Yeah, I do see that, yes.

4 Q And then you mentioned you would be checking for batteries,
5 hazardous type items out at the burn pit?

6 A Yes.

7 Q And where were those supposed to go?

8 A KBR had a hazardous waste area and those items were to go
9 there.

10 Q And there were procedures for hazardous waste while you
11 were at Bucca, correct?

12 A There was a checklist I used to check hazardous waste.

13 Q And you never gave KBR permission to ignore the hazardous
14 waste procedures, correct?

15 A I didn't have that authority.

16 Q And before you arrived at Bucca, you never received any
17 training in what constitutes hazardous waste, is that right?

18 A Other than my civilian jobs, I dealt with hazardous waste
19 all the time.

20 Q I think you mentioned before you didn't have hazardous
21 waste training. Are you saying you did not receive hazardous
22 waste training for the QARs role?

23 A Correct, I didn't have DCMA hazardous waste training.

24 Q One of the services you inspected was water purification, I
25 think you mentioned.

MATTHEW HERSCH - CROSS-EXAMINATION

1 A Yes.

2 Q And when you would inspect that service, part of the
3 inspection was asking the KBR operator to explain KBR's
4 activities to you, is that right?

5 A I know I had a checklist that was specific to the water
6 purification area.

7 Q And as a lay person, in terms of water purification, did
8 you expect the KBR operators to have more expertise than you
9 would?

10 A That's kind of a leading question. I don't know -- can you
11 rephrase it please?

12 Q We'll turn to testing the water. That wasn't one of your
13 responsibilities, correct?

14 A No. As it related to water purification, I had a specific
15 checklist that I went to that area and made sure that KBR
16 complied with that checklist.

17 Q And you don't know whether KBR or somebody else was testing
18 the water, is that right?

19 A I don't know, other than I used the water. We all used the
20 water and none of us got sick.

21 Q And I just have a couple more questions.

22 So, you had no authority to give KBR permission to depart
23 from the LOGCAP contract terms, correct?

24 A I did not.

25 Q And during the entire time you served as a QARs, you never

MATTHEW HERSCH - CROSS-EXAMINATION

1 gave KBR permission to depart from contract terms, correct?

2 A During my deposition, there was an incident that happened
3 outside the wire with regard to a spill, a hazardous spill
4 outside the wire of Camp Bucca.

5 Q I think you said in your deposition you didn't give them
6 permission to?

7 A Well, during the deposition, I was asked about the incident
8 and I didn't remember the incident. And again, 12 years and
9 we've been at this a number of months. I haven't talked to
10 anybody, but my recollection of the incident that occurred makes
11 sense to me in this way.

12 There was -- because now I don't know if, if I had pictures
13 during the deposition, but I remember an overturned fuel truck
14 that happened on one of the MSRs outside of FOB Bucca. And
15 where my name was listed was there was a command decision not to
16 send personnel out of the wire, because we had a lot of enemy
17 activity in the area, to go and do that. So that spill was
18 written up and the FOB commander at the time made a decision
19 that it wasn't worth loss of life to go out and do this. So I
20 do remember -- I'm recalling that incident more.

21 So, the conversation, I believe, was we had a spill, KBR
22 identified it, told us where it was. It wasn't technically --
23 it wasn't inside the FOB, which was the area that I had purview
24 of, but they reported the spill and the decision was not to go
25 out and watch them clean it up. Whether they cleaned it up or

MATTHEW HERSCH - CROSS-EXAMINATION

1 not, I don't know, but the decision was not to send me out to
2 that area.

3 And in retrospect, it was I think a wise decision because
4 four weeks later we lost personnel due to IADs on that MSR.

5 Q Setting aside where you're saying in your deposition you
6 didn't remember giving KBR permission to not clean up the
7 hazardous spill you're describing on that one occasion, you're
8 saying it's not clear whether you remember it differently now.
9 But setting that aside, you never gave KBR permission to deviate
10 from the contract terms, correct?

11 A I did not.

12 Q Thank you. That's all I have.

13 MR. JOHNSON: No redirect, Your Honor.

14 THE COURT: You may step down, sir. Thank you very
15 much.

16 THE WITNESS: Your Honor, do I have permission to get
17 in my car and drive home?

18 THE COURT: You may.

19 (Witness excused.)

20 MR. MATTHEWS: Your Honor, may we proceed?

21 THE COURT: You may.

22 MR. MATTHEWS: KBR calls Roger Singleton.

23 THE DEPUTY CLERK: Sir, please come forward. Please
24 raise your right hand.

25 ROGER SINGLETON, DEFENSE WITNESS, SWORN

ROGER SINGLETON - DIRECT EXAMINATION

1 THE DEPUTY CLERK: Please have a seat.

2 Sir, please speak directly into the microphone, state
3 your name and please spell your first and last name.

4 THE WITNESS: My name is Roger Singleton, R-O-G-E-R,
5 S-I-N-G-L-E-T-O-N.

6 THE DEPUTY CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. MATTHEWS:

9 Q Good afternoon, Mr. Singleton. And you've now given us
10 your full name. Can you give us your permanent address?

11 A 249 Sage Creek Road, Bathalto, Illinois.

12 Q And, sir, did you serve in the military?

13 A I did.

14 Q Can you please briefly describe your military service?

15 A I served approximately ten years in the United States Navy
16 in the engineering department, combat surface ships.

17 Q And what was the time period?

18 A '84 to '94.

19 Q And for whom do you currently work?

20 A KBR.

21 Q And where are you working?

22 A Bahrain.

23 COURT REPORTER: Where, I'm sorry?

24 THE WITNESS: Bahrain.

25 MR. MATTHEWS: Spell that for her.

ROGER SINGLETON - DIRECT EXAMINATION

1 THE WITNESS: B-A-H-R-A-I-N.

2 BY MR. MATTHEWS:

3 Q Is that work under LOGCAP III?

4 A No.

5 Q Have you worked under LOGCAP III?

6 A Yes.

7 Q When did you first work under LOGCAP III?

8 A November, 2003.

9 Q And where that?

10 A Afghanistan.

11 MR. MATTHEWS: Your Honor, we have a few
12 demonstratives. May I approach?

13 THE COURT: You may.

14 BY MR. MATTHEWS:

15 Q Mr. Singleton, I'm putting up demonstratives that based on
16 information you provided lays out the locations where you
17 worked. Can you just walk us through that. You said, November.
18 I assume that's consistent, so starting November, December of
19 2003, tell us about where you were and what you did?

20 A Yes, in December, 2003, I have arrived at Bagram Air Base
21 as an HVAC technician. Throughout the three years I was in
22 Afghanistan, I was promoted to a series of positions which
23 eventually took over a Task Order 92 and 118 called The Sojola
24 Sites [ph]. That's line to an operations area in which I
25 provided personnel in support to 49 bases outside of Bagram and

ROGER SINGLETON - DIRECT EXAMINATION

1 Kandahar.

2 Q What was your title?

3 A I was the area site manager.

4 Q And was Bagram included among those 49 bases?

5 A No.

6 Q You were stationed there, but not responsible for Bagram?

7 A I had an office there only.

8 Q Okay. And we included Kandahar on here. Were you also
9 based there or had an office there.

10 A Yeah, I had an office there where I visited to help support
11 the commands in the south.

12 Q During your time in Afghanistan, did you have occasion to
13 visit any of the 49 bases that you had responsibility for?

14 A I visited all of them.

15 Q And how did you -- how did you move in theater?

16 A Typically, rotary or fixed-wing aircraft.

17 Q To all 49 basis?

18 A Yes.

19 Q And did there come a time when you left Afghanistan and
20 moved over to Iraq?

21 A Yes, I left Afghanistan and arrived in Iraq in the Mosul
22 area in November of 2006.

23 Q And what did you do there?

24 A I was the site manager for FOB Diamondback.

25 Q And that was in the Mosul area?

ROGER SINGLETON - DIRECT EXAMINATION

1 A Yes.

2 Q And how long were you the site manager there?

3 A About nine months.

4 Q And then what position did you take?

5 A We combined FOB Merez and Diamondback, and I took over both
6 of those sites as the general site manager.

7 Q So you were site manager at Merez initially and then you
8 became the general site manager for Merez -- I'm sorry. You
9 were the site manager for Diamondback originally and then you
10 became the general site manager for both Diamondback and Merez;
11 is that correct?

12 A That's correct.

13 Q And there in Mosul?

14 A Correct.

15 Q And how long were you there?

16 A Until April of 2009.

17 Q And then what did you do?

18 A I moved to Q West as the site manager there and I remained
19 there until August of 2009.

20 Q As the site manager or general site manager, can you
21 briefly describe your responsibilities?

22 A Yes. I was overall in charge of personnel providing base
23 life support services for the military on the ground.

24 Q So, you were responsible for overseeing on behalf of KBR
25 the base life support services that they provided to the

ROGER SINGLETON - DIRECT EXAMINATION

1 military at those bases?

2 A Yes.

3 Q And then after August of 2009, what did you do next?

4 A I was promoted to a deputy project manager and transferred
5 to Balad, Iraq.

6 Q And were your responsibilities different or the same?

7 A They were a higher level over a larger area.

8 Q During the tenure while you were in Afghanistan and then in
9 Iraq, did you experience war?

10 A Absolutely.

11 Q What was that like?

12 A It was treacherous. It affected the way we did business,
13 the way we moved, the way we had to perform the duties that we
14 were directed to do by the military.

15 Q Did you personally experience hostilities?

16 A Yes.

17 Q As a manager, did you personally experience any casualties
18 among the people who reported to you?

19 A In both countries.

20 Q Did you have a security clearance?

21 A Yes.

22 Q When did you get that?

23 A In 2004.

24 Q And why did you need a security clearance?

25 A I was heavily involved in a base camp planning process both

ROGER SINGLETON - DIRECT EXAMINATION

1 in primarily Afghanistan and then in Iraq with the Military J-7
2 to support either expansion or new bases throughout the AOR.

3 Q Are you familiar with the term Team LOGCAP?

4 A Yes.

5 Q Can you tell us what Team LOGCAP is?

6 A Team LOGCAP is a myriad of organizations with the AMC
7 LOGCAP support office; DCMA which includes their entities and it
8 supported units as well as us, the contractor.

9 Q I'm showing you a document up on the screen. As previously
10 indicated, this is KBR Exhibit 143. Have you seen this before?

11 A I've seen similar slides of this before, yes.

12 Q In what context would you have seen similar slides?

13 A This is a military slide that was provided by Team LOGCAP
14 to train incoming units to theater.

15 Q And so you mentioned when I asked you without the slide in
16 front of you what Team LOGCAP consisted of, you mentioned it
17 supported units?

18 A Yes.

19 Q And I think you mentioned the contracting authorities?

20 A Yes, DCMA, yes.

21 Q And I see on here the contractor is listed and
22 specifically, KBR. Does this indicate that KBR is in military
23 chain of command?

24 A We were integrated with Team LOGCAP doing military LOGCAP
25 support and DCMA as a relationship to provide those services.

ROGER SINGLETON - DIRECT EXAMINATION

1 Q Let me ask it again. Was KBR in military chain of command?

2 A We were not in the military chain of command.

3 Q I'm going to show you a slide that's been prepared,
4 basically a simplification, if you will, of the previous slide.
5 Can you identify each of the entities other than KBR?

6 A Yes, the supportive units would be the commands on the
7 ground and various entities. The LOGCAP support officers were
8 the LSOs, were part of the Team LOGCAP that reviewed
9 requirements from the supported units to determine if they would
10 be in scope. And then administrative contracting officers,
11 which included the ACOs, QARs, quality assurance reps, were
12 there to provide direction and oversight.

13 Q Did the supported units include the base command?

14 A Yes.

15 Q Did you have occasion to meet with this group of entities
16 that you've referred to as Team LOGCAP on occasion?

17 A We met with this entire team informally and formally at
18 different periods. Sometimes daily and informal; weekly for
19 formal meetings.

20 Q What would be purpose of those meetings? Let's break them
21 down. You mentioned both informal and formal. What about the
22 informals?

23 A Well, informal was just about daily operations; stopping by
24 the mayor's cell to see if there's any issues or concerns today.
25 Is there anything you're concerned with? Do you see any issues?

ROGER SINGLETON - DIRECT EXAMINATION

1 Q And when you say issues, let me interrupt you. You're
2 asking them whether they had issues with what?

3 A With our performance, number one, or with the services that
4 we were providing.

5 Q And those informal meetings, did you discuss developments
6 at the base or in the theater?

7 A Informally, if there was going to be some changes in the
8 structure of a base or command, we would discuss those, yes.

9 Q What about the formal meetings? What was on the agenda
10 there?

11 A Well, formal agenda is depending on what meeting it was.
12 It could have been base camp master planning. It could have
13 been surge requirements. It could have been descope
14 requirements, but at those formal meetings, that's when we'd all
15 be together listening and discussing the subject matter or
16 agenda of that meeting.

17 Q And I'm going to ask you this question without asking you
18 to distinguish between Afghanistan and Iraq. Are there any
19 differences that you would note between the two in terms of Team
20 LOGCAP meetings?

21 A No, operations were the same.

22 Q Beyond Team LOGCAP, did you have occasion while you were in
23 Afghanistan to meet with senior military commanders?

24 A Yes.

25 Q Can you tell us who that was and what levels they were,

ROGER SINGLETON - DIRECT EXAMINATION

1 where they were?

2 A Well, I would meet all the way up to a deputy commander in
3 Iraq.

4 Q I was asking first about Afghanistan?

5 A Oh, sorry.

6 Yes, we had weekly formal meetings with the joint task
7 force at the command offices in Bagram and Kandahar Iraq to
8 discuss the area of operation, changes and requirements.

9 Q And were these the base personnel, the theater personnel?
10 Who would these be?

11 A It would be anywhere from the commander on the site, the
12 commander over that area of responsibility, DCMA, LOGCAP's
13 support office that would be in those meetings to include the
14 engineers, like the J-7, the planners or the Operations J-3,
15 Intel J-2, and then J-4, the logistics folks.

16 Q And I was being specific about Afghanistan. Did you
17 participate in similar meetings while you were in Iraq with
18 senior command?

19 A Yes.

20 Q Any differences you would note or about the same?

21 A No real differences, just different operations from the two
22 countries.

23 Q You mentioned in passing the surge. Did you have reason to
24 be informed about the surge as it was happening?

25 A Well, typically, they brought me in prior to any surge

ROGER SINGLETON - DIRECT EXAMINATION

1 requirements, as well as DCMA, LOGCAP so the requirements could
2 be determined and we could be -- we could forecast what we may
3 have to do in the future once directed by the U.S. Government.

4 Q And were you allowed to participate in those discussions
5 because of your security clearance?

6 A Yes.

7 Q Okay. Go back to Afghanistan. When you first arrived in
8 Afghanistan, were there burn pits in use at the bases where you
9 were either headquartered or where you visited, where you were
10 responsible for?

11 A Yes.

12 Q Specifically, was there a burn pit at Bagram?

13 A Yes.

14 Q Do you know who operated that burn pit?

15 A KBR operated the burn pit.

16 Q Was there a burn pit at Kandahar?

17 A Yes.

18 Q And who operated that burn pit?

19 A KBR.

20 Q But you said earlier you didn't have responsibility for
21 those bases, at least responsibility for KBR's activities at
22 those bases; is that correct?

23 A That's correct.

24 Q So you don't bring to the table knowledge about those
25 operations, do you?

ROGER SINGLETON - DIRECT EXAMINATION

1 A Well, I have some knowledge. We were a tenant there. We
2 actually had to dispose of trash in the sorting areas there, so
3 we did have a basic knowledge of the operation of those two burn
4 pits.

5 Q To your knowledge, was the military aware that KBR was
6 operating those two burn pits?

7 A Yes.

8 Q How do you know that?

9 A Well, through planning sessions and the task orders that
10 were written that had the operation already being done by the
11 military prior to us taking it over.

12 Q You said the planning session. What did you mean by that?

13 A Well, base camp planning. Although I managed 49 bases
14 outside of Kandahar and Bagram, those meetings also included any
15 direct requirements for Kandahar and Bagram via other
16 management.

17 Q Do you know who made the decision to use burn pits?

18 A The military.

19 Q How do you know that?

20 A I just happened to be involved with a couple of expansions
21 on bases. One being Salerno where the base was being expanded,
22 so we were involved with the FET, the facilities engineering
23 team that did all the base camp planning in the AOR. The base
24 was getting ready to have a surge. It was going to increase and
25 the FET Team or engineering team in their base camp planning

ROGER SINGLETON - DIRECT EXAMINATION

1 documents directed where the burn pit would be relocated as well
2 as Bagram. Although I didn't have any operational control in
3 Bagram, I was privy to the base camp planning through the FET
4 Team and it was subsequently relocated due to expansion there as
5 well.

6 Q While you were in Afghanistan, was there any recycling?

7 A No.

8 Q Why not?

9 A There was no vehicle for recycling.

10 Q What about in Iraq, was there recycling there?

11 A No.

12 Q Why?

13 A There was no vehicle for recycling.

14 Q While you were in Afghanistan, were incinerators brought in
15 to serve for solid waste disposal?

16 A Not while I was in Afghanistan, no.

17 Q Could KBR have independently decided to bring incinerators
18 into bases in Afghanistan?

19 A No.

20 Q Could they have done so with respect to bases in Iraq?

21 A No.

22 Q What's the basis for your answer?

23 A We would have to receive U.S. Government direction and
24 funding to do so.

25 Q And so that direction would have come from whom?

ROGER SINGLETON - DIRECT EXAMINATION

1 A The military, through DCMA.

2 Q At the bases where KBR did operate a burn pit for which you
3 were responsible for, so give me your firsthand knowledge, did
4 KBR conduct sorting at the burn pit?

5 A Yes, they did.

6 Q In conducting sorting, what would they be looking for?

7 A Prohibitive items.

8 Q Which was?

9 A Which includes -- you know, we had a list. The list came
10 inside the task order and the -- the large emphasis was on any
11 ammunition, unexploded ordnance that would -- that would get
12 into the fire after the sorting process. So, we prevented -- by
13 sorting that stuff, we prevented that material from getting into
14 the fire.

15 Q If you --

16 A In addition to that, when we did find those types of
17 prohibited items, we had to report that up through the chain of
18 command of the command on that site to include an incident
19 report through to the DCMA government chain.

20 Q Well, I was going to ask you, what did you do when you
21 found unexploded ordnance? Was KBR authorized or capable of
22 dealing with that?

23 A No, we stopped. We found it, we would stop and then we
24 would call the mayor's cell. In most cases, that's what it was
25 called. And they would send down an ordnance disposal team.

ROGER SINGLETON - DIRECT EXAMINATION

1 Q Now, are you providing this testimony based on specific
2 recollections of that happening?

3 A Personal, practical knowledge.

4 Q It happened more than once?

5 A Yes.

6 Q How did it get in there?

7 A Well, the tenants throwing things in the dumpsters.

8 Q By the tenants, who do you mean?

9 A Supporting units or other contractors.

10 Q Did the military monitor and evaluate KBR's performance at
11 the bases for which you were responsible?

12 A Yes.

13 Q How did they do that?

14 A They did it through -- DCMA did it through the ACO, the
15 QARs and also the supported units provided CORs and co-CARs to
16 audit the services being conducted by the contractor.

17 Q How frequently would they conduct such monitoring?

18 A Depended on their risk assessment and the subsequent
19 determined criticality of that service.

20 Q Can you give us any examples of something they considered
21 critical?

22 A Water production, gally services. Excuse me, dining
23 facility services. Those were the two biggest. Power
24 generation. Those were the three big ones.

25 Q And if you can generalize, but only if you can, if it was

ROGER SINGLETON - DIRECT EXAMINATION

1 considered critical, how frequently would they conduct
2 monitoring of those activities?

3 A Weekly. And what I mean by weekly, all those entities did
4 it weekly. So it may not happen on the same day because they
5 typically did it independent of each other.

6 Q And by those entities, let's be clear who you mean by that.

7 A I mean, the QARs, the CORs and the co-CARs.

8 Q And can you give us examples of noncritical services?

9 A Laundry, grounds maintenance, bill lading services and the
10 burn pits for solid waste management was another.

11 Q How frequently, if you can generalize, how frequently would
12 they conduct monitoring of noncritical services?

13 A Again, typically, monthly all the entities and typically
14 independent of each other.

15 Q Did you personally observe inspections by DCMA personnel of
16 the way KBR operated burn pits?

17 A Yes.

18 Q Did you personally observe inspections by CORs and QARs of
19 KBR burn pits?

20 A Yes.

21 Q Did you have occasion to discuss the findings of those
22 inspections with any of the DCMA personnel or the supported unit
23 personnel?

24 A Yes, typically, if they found an issue, being the site
25 manager or general site manager, they would bring that to my

ROGER SINGLETON - CROSS-EXAMINATION

1 attention immediately whether in a informal meeting or something
2 formal.

3 Q So, speaking generally, not necessarily about burn pits,
4 were there circumstances where there would be findings that
5 would be brought to your attention in an informal way?

6 A Sure, yes.

7 Q And how would you address any issues or concerns that were
8 raised informally?

9 A Well, informally or formally, we would take the appropriate
10 action and put our own -- investigate it and put our own
11 corrective action in place to prevent reoccurrence.

12 Q But if it was done informally, would there be a record of
13 that?

14 A No.

15 Q I mean, would there be a government record of that?

16 A No.

17 Q Were there times when the oversight authority would
18 implement something that was a formal process?

19 A Yes, they could issue a corrective action request, which is
20 a formal process.

21 Q Is that a term of art, corrective action request?

22 A Yes, it is a term.

23 Q And are there -- how does that process work? They issue --
24 what would they issue?

25 A Well, what they'll do is subsequent to an audit finding,

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1 they would issue us a document, a formal document in the manner
2 of a corrective action request. This would come to us,
3 typically to me being the site manager and then I would raise
4 that to my hires. And we would do a formal response back to the
5 government with our corrective action plan.

6 Q So was that done every time you received a CAR?

7 A Not -- we would file a formal response, but there were some
8 findings that we did not concur with the U.S. Government and we
9 had subsequent meetings after that to resolve those.

10 Q But were they resolved?

11 A Yes, every time.

12 Q Were all CARs resolved to the satisfaction of the
13 government to your knowledge?

14 A To my knowledge, yes.

15 Q In your experience, again, for which the bases you were
16 responsible, did KBR receive any CARs for the burn pits?

17 A No, not on my sites.

18 Q Thank you, Mr. Singleton.

19 Pass the witness.

20 THE COURT: Cross.

21 CROSS-EXAMINATION

22 BY MS. SMITH:

23 Q Good afternoon, Mr. Singleton.

24 A Good afternoon.

25 Q You discussed burn pits that were in use in Afghanistan.

ROGER SINGLETON - CROSS-EXAMINATION

1 And do you know if the use of burn pits were addressed in the
2 language of any of the Afghanistan task orders?

3 A They weren't in my task orders. I cannot address the other
4 task orders.

5 Q When you went to Iraq, the first base where you were
6 located was Diamondback, correct?

7 A Yes.

8 Q And at Diamondback, there was no burn pit, is that right?

9 A That is correct.

10 Q The trash at Diamondback was taken to Merez; is that
11 correct?

12 A That's correct.

13 Q When you arrived at Diamondback, was there already a burn
14 pit operation at Merez?

15 A Yes.

16 Q And was KBR operating that burn pit at that time?

17 A Yes.

18 Q And so you weren't there when the decision was made to
19 construct that burn pit; is that correct?

20 A I was not.

21 Q And you weren't there when the decision was made to vacate
22 that burn pit; is that correct?

23 A I was not.

24 Q What about at Q West, was there a burn pit operation there
25 when you arrived?

ROGER SINGLETON - CROSS-EXAMINATION

1 A Yes.

2 Q And was KBR operating the burn pit at that time?

3 A Yes.

4 Q And again, you weren't there when decision was made to
5 construct that burn pit, right?

6 A Correct.

7 Q And you weren't there when the decision was made to
8 relocate it, is that right?

9 A That's correct.

10 Q You agree that any direction that the ACO would have given
11 to KBR to operate a burn pit would be in writing, correct?

12 A Well, first, not all direction comes specifically from the
13 ACO.

14 Q Okay.

15 A It could have came in a task order from the PCO through
16 DCMA to the theater, which would address solid waste management.

17 Q And that's in writing, right?

18 A The -- that would be an option in writing, yes.

19 Q So any direction that KBR would have been given to operate
20 a burn pit would be in writing, correct?

21 A Any -- it would be -- it would be in the task order to do
22 solid waste management. And if it was a site that we were
23 taking over and the military was already operating a burn pit,
24 it was decided to -- by the military to operate -- fall in on
25 their operation.

ROGER SINGLETON - CROSS-EXAMINATION

1 Q And that direction would be in writing, is that right?

2 A It was in writing. It was in a task order saying, take
3 over solid waste management.

4 Q But not -- are you saying it didn't necessarily
5 specifically say to take over the burn pit?

6 A Correct.

7 Q You received training on LOGCAP III, correct?

8 A Yes.

9 Q And I think it was called LOGCAP 101, right?

10 A Correct.

11 Q And in that training, you were taught to do what's in the
12 contract; don't do what's not in the contract, correct?

13 A We were taught the processes of procedures on how to
14 accurately perform work under the LOGCAP contract.

15 Q So, okay. And if the customer wanted KBR to perform a new
16 task, they had to go through the established LOGCAP process,
17 right?

18 A They would go through the established process, yes.

19 Q And KBR insisted on receiving contract direction in
20 writing, correct?

21 A For new services over and beyond what was already in a task
22 order.

23 Q Under the terms of the LOGCAP contract documents, KBR had
24 supervisory control over its employees, right?

25 A Correct.

ROGER SINGLETON - CROSS-EXAMINATION

1 Q And neither the supported unit nor DCMA supervised KBR
2 employees, right?

3 A They did not seek to direct supervise employees, correct.

4 Q So in carrying out their day to day responsibilities, KBR
5 employees who worked in the burn pits didn't report to the
6 military?

7 A That's correct.

8 Q And they didn't report to DCMA either?

9 A That's correct.

10 Q They reported to their supervisor from KBR?

11 A That's correct.

12 Q Could members of the supported units issue orders to KBR
13 employees?

14 A No.

15 Q And the military wasn't authorized to direct KBR's work,
16 right?

17 A Correct.

18 Q Under the terms of the LOGCAP contract document, KBR had
19 exclusive responsibility to hire individuals to carry out the
20 task in the statement of work of the LOGCAP contract documents,
21 right?

22 A Yes, we hired employees to meet the requirement of the
23 statement of work.

24 Q And the military was there not involved?

25 A That's correct.

ROGER SINGLETON - CROSS-EXAMINATION

1 Q KBR was also responsible for training its employees?

2 A Yes.

3 Q So the individuals working at the burn pit for KBR would
4 have been trained by their KBR supervisors right?

5 A Yes, we had a extensive training program. It took in the
6 hiring process as well as the requirements to perform the
7 function. A lot of employees that we had were from foreign
8 countries, but we developed -- when we hired personnel, we hired
9 a mix of skill sets that were English-speaking to include fluent
10 in their native language to help support the requirements of
11 their functions.

12 Q And that was all -- these were all things done by KBR?

13 A Correct.

14 Q As opposed to the military or DCMA?

15 A Correct.

16 Q KBR decided whether a particular task under the LOGCAP
17 contract was going to be done using internal KBR assets or
18 subcontracted assets, correct?

19 A Let's define subcontracted assets. We wrote subcontracts
20 up to provide labor, but they were direct employees that worked
21 for KBR. So it wasn't a subcontracted service. It was
22 subcontract labor employees that we trained, developed to
23 perform those functions.

24 Q And KBR decided whether they were going to use the
25 subcontracted labor employees or use KBR's own direct?

ROGER SINGLETON - CROSS-EXAMINATION

1 Employees, correct?

2 A We decided what was -- would save cost to the government by
3 hiring other nation's employer people to perform those
4 functions, yes.

5 Q And the military wasn't involved in those decisions?

6 A That's correct.

7 Q Nor was DCMA?

8 A Say again.

9 Q Nor was DCMA?

10 A Correct.

11 Q KBR had primary responsibility for insuring that the
12 quality of the services it was providing or that its
13 subcontractors were providing, correct?

14 A We were overall responsible for the services we provided
15 regardless of the manner in which employee we had provide that
16 service.

17 Q Okay. So if KBR was responsible for assuring that its own
18 performance was in compliance with the LOGCAP contract?

19 A Correct.

20 Q You talked about DCMA auditing KBR or the fact that the
21 burn pits were audited once a month, correct?

22 A Correct.

23 Q So, it was KBR employees or KBR subcontractors who were
24 operating the burn pit from day to day, right?

25 A It was KBR employees.

ROGER SINGLETON - CROSS-EXAMINATION

1 Q And you agree there was no one in the military who was
2 working shoulder to shoulder with KBR employees in them, right?

3 A Correct, not at the sites I was on.

4 Q And the military commanders weren't coming out to the burn
5 pits giving orders to the workers there, were they?

6 A No, but there were several -- they observed several things.
7 The commanders would come to the burn pits. They saw the
8 operation of the burn pits and actually sometimes they were
9 interested in the operation of the burn pits. As well as
10 because of the location in the sites that I was on that were a
11 distance away from the LSA or the life support area, they were
12 in an area where they had to be secured and patrolled by the
13 security forces. So the security forces were also making
14 patrols through there to ensure the safety of outside influence
15 around the entire perimeter.

16 Q But none of those individuals were instructing the KBR
17 employees in the burn pit as to how to do their job, right?

18 A They were not.

19 Q Now, you went to the burn pit once a week, didn't you?

20 A Typically, yes.

21 Q And your purpose of going to the burn pit was to observe
22 what was going on there and to make sure that the KBR employees
23 were performing their work in accordance with the contract,
24 right?

25 A It was another level of oversight to ensure compliance.

ROGER SINGLETON - CROSS-EXAMINATION

1 Q You discussed the prohibited items at the burn pit?

2 A Yes.

3 Q Was hazmat also a prohibited item?

4 A Whatever was on a prohibited items list that was in the
5 contract, that's what was in it.

6 Q And do you have a recollection if hazmat was on that list?

7 A Well, hazmat -- what kind of hazmat? What do you -- define
8 hazmat.

9 Q Well --

10 A Paint?

11 Q Sure.

12 A Okay, paint was on the prohibited item list. You couldn't
13 throw it in there.

14 Q What other sort of hazmat was on the prohibited item list?

15 A Aerosol cans. I mean, there's a multitude of things that
16 were on the prohibited items list.

17 Q That you would consider hazmat?

18 A Yes.

19 Q That's all I have, Mr. Singleton.

20 THE COURT: I have one or two questions for the
21 witness.

22 A moment ago you were asked about the way you would
23 receive a direction from KBR if it made a decision to have you
24 operate a burn pit. And in response, you said it would be in a
25 task order to do waste management. Did I hear that correctly?

ROGER SINGLETON - CROSS-EXAMINATION

1 THE WITNESS: Yes.

2 THE COURT: In other words, it would not be a surprise
3 to you that the task order didn't say, operate a burn pit and it
4 simply said, waste management?

5 THE WITNESS: Correct.

6 THE COURT: And the form of that waste management
7 would be a military determination, if I understand correctly?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: All right. Thank you.

10 MR. MATTHEWS: No redirect, Your Honor. Thank you.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 THE COURT: How is the witness coming that's --

15 MR. MATTHEWS: He's here.

16 THE COURT: Good.

17 MR. MATTHEWS: KBR calls Dr. Craig Postlewaite.

18 THE DEPUTY CLERK: Sir, please step forward. Please
19 raise your right hand.

20 CRAIG POSTLEWAITE, DEFENSE WITNESS, SWORN

21 THE DEPUTY CLERK: Please have a seat.

22 Sir, please speak directly into the microphone, state
23 your name. Please spell your first and last name.

24 THE WITNESS: My name is Richard Craig Postlewaite.
25 And Richard, R-I-C-H-A-R-D. Last name Postlewaite,

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1 P-O-S-T-L-E-W-A-I-T-E.

2 THE DEPUTY CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. MATTHEWS:

5 Q Dr. Postlewaite, first, on behalf of all assembled, thank
6 you for making this trip on such short notice. We'll try to
7 make this as brief as possible.

8 I'd like you to ask you to give the Court a little bit of
9 your background. Particularly, your service in the military,
10 can you in a capsulized fashion tell us what you did and what
11 your responsibilities were?

12 A Sure. I spent 26 years in active duty in the Air Force. I
13 rose to the rank of colonel. I'm a veterinarian and I have a
14 Masters Degree in public health.

15 And then, in the course of my career, I spent most of my
16 time, at least the last half of it focusing on environmental
17 health. And when I retired, I was working for the deputy
18 assistant secretary for self-protection and readiness under the
19 Department of Defense.

20 Then I became a contractor for five years and then a civil
21 servant for seven years where I was the director of force
22 readiness and health assurance. And in that role, I was the
23 senior policymaker for environmental health aspects of
24 deployment.

25 Q And in that role, were you responsible for developing or

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1 updating applicable policies?

2 A Certainly, that was the main part of my job.

3 Q Were there in fact -- and I'm going to refer to them as DOD
4 policies. Please correct me if that's the wrong --

5 A No, that's the right term.

6 Q Were there DOD policies that addressed the methods of waste
7 disposal used on military bases in contingency operations?

8 A Yes, DOD-I 4716, I believe, is the instruction you're
9 referring to. That particular instruction fell under another
10 office in the Department of Defense. The one I was responsible
11 for did not address methods of waste disposal.

12 Q Let me ask the same question with respect to policies that
13 may have addressed the location of burn pits in bases, forward
14 operating bases in contingency operations. Were there military
15 policies?

16 A Yes, DOD-I 649003, which is entitled deployment health
17 talked about siting burn pit operations when possible downwind
18 away from population centers.

19 MR. MATTHEWS: Your Honor, may I approach? I have
20 several demonstratives to provide.

21 THE COURT: You may.

22 MR. MATTHEWS: Thank you.

23 BY MR. MATTHEWS:

24 Q Dr. Postlewaite, you just identified DOD-I. That's DOD
25 Instruction?

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1 A That's correct.

2 Q 6490.03. And let's show that on the screen. Just looking
3 at that cover page, is that the document to which you referred?

4 A It is.

5 Q And did you have a role in either instructing or revising
6 that document?

7 A Yes, this was a revision to an instruction that already
8 exist and I had a major role in revising this document over a
9 period of about three years.

10 Q What is the essence of this document? What are its goals?

11 A So, the reason this document was revised was essentially
12 because in Desert Storm, Desert Shield, there was a lot of
13 lessons learned that weren't covered by existing policy. So,
14 we -- we took all those lessons learned that had to do with
15 health surveillance and risk communication, environmental
16 surveillance, medical readiness, health assessments and we
17 folded that into the new revision, which is the document that is
18 before me.

19 Q And is it too great a generalization to say that this
20 covers health issues related to deployed personnel?

21 A Absolutely. That was the entire focus is trying to ensure
22 that our deployed troops remained healthy during their
23 deployment.

24 Q And were some of these policies based on risk
25 considerations?

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1 A Absolutely. I mean, the whole document had to do with
2 risk. And when you looked at the risk to health and when you
3 looked at the solutions that we generated, these were solutions
4 and procedures that were to help ameliorate that risk.

5 Q Now, focusing only on this document, risk is a very broad
6 term. Are the risks you just referenced related to health risk
7 considerations as opposed to, let's say, operational risk?

8 A Yes. And as the subject, the subject of the instruction is
9 deployment health. So, it was all focused on health.

10 Q Whose responsibility was it to ensure that the policies
11 under DOD 6490.03 were carried out?

12 A Commanders at all levels, including the service
13 secretaries, the geographic combat commanders, et cetera. It
14 applied to all commanders, basically.

15 Q So they owned these responsibilities?

16 A This directed them to carry out the responsibilities as set
17 forward in the policy for the Department of Defense.

18 Q Did they delegate that responsibility?

19 A Commanders by and large generally, as a matter of doctrine
20 and policy, can't delegate responsibility. They can delegate
21 authorization or delegate authority to carry out various
22 procedures, but commanders are responsible for the content of
23 military regulations.

24 Q So, just to be clear and I think you and I have had this
25 conversation before. You used the term "authority" and

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1 "authorization" and that's a kind of buzz word here. When you
2 use it, are you talking implementation versus oversight?

3 A That's correct. So a commander can't accomplish everything
4 either himself or herself. They have to rely on other people.
5 So they authorize other people to carry out those procedures,
6 but the responsibility stays with the commander.

7 Q Responsibility for insuring that those instructions are
8 carried out; is that correct?

9 A That's correct.

10 Q So based on these policies that you mentioned or based on
11 these policy documents, who is responsible for choosing the
12 method of waste disposal in a contingency operation?

13 A Well, in the instruction, it doesn't specify down to the
14 lowest level. I mean, it stops with the commander. The
15 commander is responsible. Now, he can authorize other
16 individuals that work for him to help carry out those
17 procedures, but the commander is responsible.

18 Q And if you know, what are the factors that a commander
19 would consider in deciding what method to use in a contingency
20 operation?

21 A Well, there likely would be dozens of different factors. I
22 mean, this was during a wartime operation, so the commanders
23 have to balance risk. That's what they get paid for.

24 In regard to waste management, for example, ideally the
25 easiest thing to have done and most people would have liked to

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1 have had it done is have third-party nationals come on the base
2 and haul the trash away. Not possible, because that didn't
3 exist.

4 So they were left with other options like landfill,
5 incineration, burn pits and each of those has pluses and
6 minuses. A big one having to do with landfills is generally
7 landfills often can't be located on the installation and they
8 may actually have to be located off of an installation.

9 And in a wartime situation like we were dealing with in
10 Iraq and Afghanistan, carrying trash off base put people at
11 risk. So that was likely a consideration in the risk-based
12 decisions.

13 Q Would you have personal knowledge about how they would
14 consider bringing incinerators, if you know?

15 A I'm aware that U.S. Central Command had an initiative to
16 bring in incinerators fairly early. You know, by that I would
17 say, probably in the 2006 time frame, 2007 time frame. And I
18 understand that they got in some difficulties with the
19 anti-deficiency violations and as a result, that slowed down the
20 implementation of the incineration plan.

21 And then that took a delay of maybe a year, year and a half
22 before that was ironed out before the program restarted and
23 there was a widespread push to bring incinerators into theater.

24 Q And you touched on -- you got close to touching on, sort
25 of, contract issues. You're not a contract expert?

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1 A I am not.

2 Q So you don't have any knowledge about exactly how the
3 LOGCAP contract functioned?

4 A I don't. I never read the LOGCAP contract.

5 Q Were there DOD policies that addressed what substances
6 could be burned in open-air burn pits in contingency operations?

7 A There were and the initial ones were actually contained in
8 a U.S. Central Command SOP. I think it was 200-1, I believe,
9 was the number and there were some general guidelines in that.
10 But overtime it became clear to the under -- let's see. I guess
11 it was the deputy assistant secretary for environmental health
12 under the under secretary for acquisition technology and
13 logistics, which is just outside of the health field. That's
14 the line side of the house. They actually issued their own
15 instruction on open burn pit operations and became much more
16 prescriptive in what was allowed to be burned and what wasn't
17 allowed to be burned.

18 Q And were those decisions made on theater-wide base?

19 A Yes -- no, no. International basis, where DOD troops are
20 deployed.

21 Q Turning back to this document. I think you told us you had
22 a role and you were making revisions to it. I want to focus on
23 a couple of its provisions. Did it include a comprehensive or
24 requirement that troops -- commanders develop a comprehensive
25 deployment health program and records with health threats and

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1 carrier -- that deployments directed to health threats and
2 carrier brands to deployments overseas?

3 A It absolutely did and that was one of the lessons learned
4 from Desert Storm, Desert Shield where that really didn't happen
5 to the degree it should have. So we tried to make this
6 instruction as inclusive and broad as we possibly could to
7 ensure that there was a program to identify health threats and
8 to ameliorate or mitigate those threats as much as possible.

9 Q Now, I'm showing you some language here. You may not
10 remember every specific line, but is this generally in the range
11 of policies addressing the deployment health programs?

12 A Yes.

13 Q All right. And then also, was there language that required
14 commanders to develop an effective force health protection plan,
15 including a surveillance plan?

16 A Yes. The health surveillance plan focused on environmental
17 surveillance. We wanted to make sure that all of the potential
18 hazards that were present in the air, water and soil were
19 identified, appropriately characterized and they're risk
20 assessed.

21 Q And was there also a provision that required that the
22 commanders develop health risk communication plans?

23 A Yes, there was. And again, lesson learned from 2003 where
24 we didn't do that very well and we didn't communicate with our
25 troops to ensure that they were aware of what kinds of hazards

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1 they may be encountering.

2 Q And these instructions out of DOD-I 6490.03 were to be
3 carried out by military personnel in theater?

4 A Absolutely. The instructions applied to government and
5 military personnel, i.e., civilians, government civilians and
6 military personnel. It did not apply specifically to
7 contractors.

8 Q So, for example, the responsibility for insuring that there
9 was a deployment health surveillance plan fell on the commanders
10 in theater?

11 A That's correct.

12 Q Could they delegate responsibility for carrying that out?

13 A They can't delegate responsibility. They can delegate
14 authority.

15 Q Did the military in war theaters we've been talking about,
16 Iraq and Afghanistan, in fact conduct air quality sampling at --
17 on a operating bases?

18 A Yes, quite extensively.

19 Q Did they also test for soil and water?

20 A They did.

21 Q What were the standards? Let's just stick with air
22 quality. What were the standards that he has to have tested
23 again?

24 A The standards that we used were varied. We looked at EPA
25 standard. We looked at OSHA standards. It turns out that none

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1 of those standards meet the needs of the military deployment
2 very well, because most of them have to do with OSHA, for
3 example, is exposure eight hours a day. EPA standards have to
4 do with 20 or 30 years of exposure.

5 So our military fell in between those two ranges and we
6 actually developed our own guidelines which were called military
7 exposure guidelines. And these were developed by the Army at
8 the Center for Health Promotion and pre-med analysis, and each
9 of the services adopted them.

10 Q You said there were guidelines. Does that mean, they just
11 standards or were they just general guidelines?

12 A They are guidelines in that if they are exceeded -- we
13 built them protective enough such that if they are exceeded,
14 that essentially established an action level, which required
15 additional assessment, evaluation, sampling, perhaps, in order
16 to refine the risk. So just because there was an accedence
17 didn't mean a health standard hadn't been violated.

18 Q And indeed, was this air quality monitoring carried out by
19 military personnel?

20 A Yes, as far as I know. It's possible that the military may
21 have contracted with others to assist them, but by and large, it
22 was military.

23 Q And who analyzed the results of that testing?

24 A The services did and an awful lot of the samples were
25 analyzed by the Army at the Center for Health Promotion and

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1 Preventive Medicine.

2 Q And you indicated they may have found that there was some
3 risk levels or, at least, that the MEGs, the military guidelines
4 were exceeded. What would they do with that kind of
5 information?

6 A So when MEGs were exceeded, that kicked off further action.
7 Generally, more sampling. And the other thing they looked at
8 was what we call pathway completion. Just because the values in
9 the air, water or soil are elevated, if those elevated amounts
10 of chemicals don't enter into somebody's body either by
11 breathing, by drinking, by eating, they don't constitute a
12 health risk in and of themselves. So during this assessment,
13 the opportunity for pathway completion was also assessed.

14 Q Would the results of this testing have been communicated
15 across theater, within theater, at bases? How was that done?

16 A So, DOD-I 6490.03 required the development of comprehensive
17 health risks communication plans for that very reason. And you
18 know, I was not in theater, so I can't say for certain how
19 effective they were, but I do know by and large that those risk
20 communication efforts were generally carried out.

21 Q And that information would have been provided to whom under
22 that plan?

23 A It would have been provided to the troops that were at the
24 forward operating bases.

25 Q At the soldier level?

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1 A Exactly.

2 Q How about at the contractor theater, would they have been
3 given that same information?

4 A It's quite possible. I don't know that.

5 Q Based on air quality monitoring results, are you aware of
6 the United States directing KBR to stop using burn pits?

7 A No firsthand knowledge, but I know that Centcom had a plan
8 in place to try to implement and to install as many incinerators
9 as possible. So I assume there would be some trickle down
10 effect of that policy.

11 Q Well, let's talk about the time when you first became aware
12 of burn pit issues in Iraq. Did there come a time when you
13 first became aware?

14 A Certainly.

15 Q And when was that?

16 A I think it was about 2004. It's hard to remember. Plus or
17 minus a year, I would say, when I first became aware of it.

18 Q And what were the circumstances of being aware?

19 A As I recall, I got a phone call from a colleague in the Air
20 Force surgeons office that explained to me that they had some
21 issues with a burn pit at Balad Air Base that they had
22 accomplished some air sampling on and they had some concerns
23 with.

24 Q And as a result of those concerns, was a study done at
25 Balad?

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1 A Yes. In fact, extensive studies were done at Balad. The
2 burn pit at Balad was the largest burn pit in theater at the
3 time. The population of Balad Air Base was quite large. And
4 because the burn pit was actually located within the bounds of
5 the installation and in a location that was fairly safe, we
6 essentially chose that burn pit to be our poster child; i.e., to
7 do, you know, extensive amounts of sampling, air sampling at
8 that location as we felt that whatever we found there would
9 probably be representative of the numerous other burn pits in
10 theater.

11 Q Did you have a hand in designing that study?

12 A I didn't design it. It was designed by industrial
13 hygienist and bio-environmental engineers, but I certainly was
14 kept informed of the design of the study.

15 Q The industrial hygienist and bio-engineers, were they
16 contractors or military?

17 A Military, primarily Air Force and Army.

18 Q And did they reach a conclusion with respect to the air
19 quality at Balad?

20 A Over a number of years, yes. There was a comprehensive
21 risk assessment done that was published in 2008 that assumed
22 worse case assumptions for exposure.

23 Twenty-four hours a day, which is, you know, essentially
24 pretty unrealistic to be honest with you, but we felt like if we
25 put in all the worse case assumptions and we let the chips fall

CRAIG POSTLEWAITE - DIRECT EXAMINATION

1 as they may, if it turned out that there was no health risk
2 identified with that level of exposure, we felt like we were on
3 pretty safe grounds that a lower level of exposure wouldn't
4 constitute a health risk.

5 Q So focusing on the slide that now in front of you on the
6 left hand column, do you see the CHPPM study? Is that the study
7 that you were referring to?

8 A Yes, it is.

9 Q It talks about the conclusions they reached, but what I
10 really want to focus on is not so much these conclusions. This
11 might remind you of what they were and you've seen this before,
12 but what I want to ask you is was performing this study and
13 publishing these results, was this in furtherance of the
14 military's responsibility under DOD 6490.03 to study the health
15 in theater, to determine if there were health threats and to
16 publish the results of those analyses?

17 A Absolutely. This is exactly why we revised that regulation
18 so we could get this level of fidelity in our environmental
19 health operations.

20 Q And to your knowledge, did the military then set about to
21 inform the troops in theater about this result?

22 A They did.

23 Q And how did they do that, if you know?

24 A Well, they had town meetings at certain locations and they
25 also had risk communication materials, fact sheets, if you will,

CRAIG POSTLEWAITE - CROSS-EXAMINATION

1 that were distributed and I think some of the installation
2 newspapers published articles.

3 Yes, we had a concerted effort to try to get the word out
4 about this.

5 Q And on the screen in front of you on the middle slide,
6 there is such a fact sheet from July, 2008. And again, the
7 conclusions are what they are, but I'm going to ask the very
8 same question. Is this fact sheet in furtherance of the
9 military's responsibility to publish the results of its
10 comprehensive health assessments that it conducted?

11 A Yes.

12 Q And then finally on this is a study that occurred a few
13 years later, the IOM study. Are you familiar with that?

14 A I am.

15 Q And did they reach similar conclusions as to the earlier
16 studies?

17 A They did. This study was paid for by the VA and it was
18 published in 2011, as I recall. And, yes, essentially they did
19 not find that -- that the burn pits -- there was no evidence
20 that these burn pits constituted a health risk at the population
21 level. In fact, they said if there was a health risk, the
22 probably the bigger culprit or at least concern had to do with
23 airborne indigenous matter; the dust in the air, the dust in the
24 sand that was in the air.

25 Q Indeed, but I'm going to ask this question one more time.

CRAIG POSTLEWAITE - CROSS-EXAMINATION

1 Was this study in furtherance of the military's responsibility
2 to study and communicate regarding the potential health effects
3 of airborne contaminants in the war zone?

4 A Well, it can serve as an example of that, but like I said,
5 the study was actually paid for by the VA rather than DOD, but
6 we certainly collaborated on many of these kinds of studies that
7 went to the IOM. I briefed the committee that wrote this
8 report. So the answer is, is around about way, yes.

9 MR. MATTHEWS: Thank you, Dr. Postlewaite. Pass the
10 witness.

11 THE COURT: Let me ask plaintiff, how long do you
12 expect to be with him?

13 MR. BAKER: I would hope to be finished in 20, 25
14 minutes.

15 THE COURT: Anybody have a problem finishing him up?

16 MR. MATTHEWS: Nobody here.

17 THE COURT: Well, let's finish him up.

18 CROSS-EXAMINATION

19 BY MR. BAKER:

20 Q Good afternoon, Dr. Postlewaite. Good to see you again.

21 A Nice to see you.

22 Q I'll try to go very quickly so we can get out of here.

23 Won't avoid rush hour, but at least get home at a decent hour.

24 A Thank you.

25 Q First of all, you don't know what the military hired KBR to

CRAIG POSTLEWAITE - CROSS-EXAMINATION

1 do with respect to waste management?

2 A I didn't hear the first part of your question, sorry.

3 Q You do not know what the military hired KBR to do with
4 respect to waste management in Iraq and Afghanistan?

5 A That's correct.

6 Q You don't know at what bases in Iraq and Afghanistan KBR
7 was tasked with waste management?

8 A I do not.

9 Q I believe you testified just a short while ago that you
10 never read the LOGCAP III umbrella contract, right?

11 A That's correct.

12 Q And you never read any task orders, correct?

13 A That's correct.

14 Q You do not have any knowledge as to what the LOGCAP III
15 contract and its accompanied task orders say about the methods
16 of waste disposal to be used by a contractor like KBR?

17 A That's correct.

18 Q You do not know which reference documents pertaining to
19 waste management were incorporated into those task orders,
20 correct?

21 A Correct.

22 Q You do not know the specific policies and procedures
23 regarding waste disposal that were applicable to contractors
24 like KBR in overseas contingency operations, correct?

25 A I do not.

CRAIG POSTLEWAITE - CROSS-EXAMINATION

1 Q You do?

2 A I do not, no.

3 Q You do not know whether KBR fulfilled its duties under the
4 LOGCAP III contract, correct?

5 A Correct.

6 Q I believe you testified in response to Mr. Matthews'
7 questions that the first you became aware of the surface burning
8 was occurring in Iraq and Afghanistan in 2004?

9 A That's my best estimate, yes.

10 Q Do you recall our deposition, I believe, on Halloween where
11 you testified you first heard about it in 2006?

12 A I don't recall, but it was someplace in that time frame,
13 2004, 2006.

14 Q Do you recall giving a declaration in 2000 and 15 in which
15 you said that sometime in 2006, you were first alerted by an Air
16 Force colonel to ongoing surface burning of waste?

17 A I believe that's what I said.

18 Q So you believe now that 2006 is probably the more accurate
19 date?

20 A You know, I really don't know. That's been a long time
21 ago. I can't say. It's someplace in that 2004 to 2006 time
22 frame.

23 Q And you did not have any responsibilities for deciding or
24 dictating the means or methods of waste disposal by contractors
25 in Iraq or Afghanistan, correct?

CRAIG POSTLEWAITE - CROSS-EXAMINATION

1 A I did not.

2 Q And you did not have any responsibility for contractor
3 tasking in Iraq or Afghanistan?

4 A I did not.

5 Q You did not have any responsibilities for dictating or
6 deciding the manner in which a burn pit could be operated by
7 contractors in Iraq or Afghanistan?

8 A Correct.

9 Q You do not have any firsthand knowledge about any
10 particular base in Iraq or Afghanistan at any particular times
11 as to what options were viable or not viable as a method of
12 waste disposal, correct?

13 A Correct.

14 Q You are not knowledgeable about the method or methods of
15 waste disposal that KBR was contractually authorized to use in
16 Iraq or Afghanistan, correct?

17 A Correct.

18 Q And you're not knowledgeable about whether KBR was
19 authorized to use burn pits in Iraq and Afghanistan?

20 A Correct.

21 Q Now, where KBR used a burn pit, you do not have any
22 firsthand knowledge as to how any burn pit siting decisions were
23 made, correct?

24 A Correct.

25 Q Where KBR used a burn pit, you do not have any firsthand

CRAIG POSTLEWATE - CROSS-EXAMINATION

1 knowledge as to what items KBR was or was not authorized to burn
2 in that burn pit under the contract, correct?

3 A Correct.

4 Q Where KBR used a burn pit, you do not know whether that
5 precluded KBR from using any other method of waste disposal,
6 correct?

7 A Correct.

8 Q Did your office interact with KBR?

9 A We did not.

10 Q Did your office communicate with KBR?

11 A No.

12 Q Did your office coordinate with KBR.

13 A No.

14 Q Did your office have any control at all over KBR?

15 A No.

16 Q Was KBR in any way integrated with the work of your office?

17 A No.

18 Q And you have no real knowledge of procurement issues, do
19 you?

20 A No.

21 Q You did visit Iraq at one point in your career, correct?

22 A In 2008, yes.

23 Q And at that time, did you visit Balad?

24 A I did.

25 Q And did Balad have a very sophisticated recycling program

CRAIG POSTLEWAITE - CROSS-EXAMINATION

1 in place at that point in time?

2 A I don't recall.

3 Q Do you recall seeing recycling going on?

4 A Yes, I saw it at Camp Victory.

5 Q And was it a fairly sophisticated operation?

6 A It was.

7 Q Can you describe it briefly?

8 A Well, there was a large structure, open-air structure with
9 a metal roof on top where there were huge piles of plastics and
10 aluminum and other materials that were being sorted by,
11 probably, ten or 12 local nationals. And then the plastics were
12 actually bound up into bales.

13 Q And this was 2008, correct?

14 A That's correct.

15 Q In his direct examination, Mr. Matthews showed you
16 portions, I believe, of your declaration; is that correct?

17 MR. MATTHEWS: Not correct.

18 BY MR. BAKER:

19 Q Do you recall executing a declaration in 2010?

20 A I do.

21 Q Do you recall in that declaration recounting the results of
22 the Balad study?

23 A I think so.

24 Q And do you recall one of the conclusions that you wrote,
25 the DOD however acknowledges that it is plausible and even

CRAIG POSTLEWAITE - CROSS-EXAMINATION

1 likely that a relatively small number of people with either an
2 increased susceptibility to smoke; e.g. genetic, family history,
3 pre-existing medical condition or exposure to smoke along with
4 other inhalation exposures, such as tobacco smoke or high levels
5 or airborne dust and sand may be affected by a serious longer
6 term health --

7 A Yes, those are my words.

8 Q And that was in reference to the Balad study; is that
9 correct?

10 A It was.

11 MR. BAKER: That's all, Your Honor.

12 Thank you, Dr. Postlewaite.

13 THE COURT: Any redirect?

14 MR. MATTHEWS: No, Your Honor. We can let the witness
15 go.

16 THE COURT: The witness may return. Thank you for
17 making the heroic trip here today.

18 Before we break up today. what's up next for defense?

19 MR. MATTHEWS: Your Honor, that completes our six
20 witnesses.

21 THE COURT: You have some exhibits you want to move in
22 evidence or have me consider them are attached to your memo, is
23 that right?

24 MR. MATTHEWS: Yes. I thought we had by agreement
25 done that.

1 THE COURT: Just for the record, make sure we put
2 everything in the record that you want. I think at the
3 pre-trial conference we were all in agreement that what you want
4 to put in is admissible, so we need to move it in there.

5 MR. MATTHEWS: Appreciate that, Your Honor. So, KBR
6 respectfully request entry of each of the exhibits that are
7 attached to its briefs, both its opening brief and its reply
8 brief. And I don't think we have any other exhibits.

9 THE COURT: And you gave me a list.

10 MR. MATTHEWS: And in the statement of facts, yes.

11 THE COURT: Now, we're going to proceed tomorrow with
12 plaintiffs, correct?

13 MR. BAKER: Yes, Your Honor. And just so I don't
14 forget, I similarly move all the exhibits that are attached to
15 our reply.

16 THE COURT: Make sure you review with the courtroom
17 deputy what we're doing so she understands what's moved in. I
18 want to make sure she has everything you want in this record.

19 MR. BAKER: So, I would like to officially move into
20 the record.

21 THE COURT: All right. We'll receive that, but as I
22 said, as a technical matter please confer with the courtroom
23 deputy tomorrow about what it is so she's on the same page. In
24 general, it's all the things attached to the memos. And then we
25 have this list of exhibits today that arose out of the pre-trial

1 conference we had last week, but I want to make sure she knows
2 what the exhibits are.

3 Now, I was given today a, I guess it was yesterday, a
4 marked up transcript of the testimony of Brad Lockhart. Is this
5 one of those ones that is my reading assignment, so you don't
6 play it in court or is this just for me to have?

7 MR. LEDLIE: Yes, Your Honor. After the prehearing
8 conference, we listened to Your Honor and we were going to read
9 that in. We're just submitting it for Your Honor's
10 consideration.

11 THE COURT: So, if I have trouble sleeping tonight, I
12 will know how to get to sleep. No, I'll take this home and read
13 it. So, plaintiffs' case begins about 9:00 p.m.

14 MR. MATTHEWS: Oh, 9:00 p.m. tonight.

15 THE COURT: It may be at 9:15, because it's been a
16 long day.

17 All right. And we have enough space tomorrow to get
18 everything done?

19 MR. MATTHEWS: Your Honor, this is why I'm standing at
20 the podium. There's a burning question that will affect many
21 people in terms of whether we are coming back Monday or not. We
22 have put in all of the direct evidence, so it really is a
23 question of --

24 THE COURT: Well, what I want to tell you all was that
25 if your -- it's more important to me that we get the record

1 developed the way you want it developed than I make some
2 specific goal of having X minutes of testimony.

3 I already told you when we met last week that if we
4 needed to carryover to Monday and it might be very much better
5 to carry over to Monday, at least, for argument. But if you
6 have some witnesses or something that wasn't quite finished, I'm
7 not one of these sticklers that have a number device up here and
8 say, that's it, folks.

9 That's why I said today, if we can't finish today,
10 we'll finish tomorrow morning, but plaintiffs have the day
11 tomorrow and I think it would be better for everybody with
12 intensity of a case like this to have the weekend to think over
13 what you're going to say in closing arguments, so.

14 I don't want to hear closing argument tomorrow. So if
15 you're running out of gas with witnesses at 3:00 o'clock or
16 four, you won't have any objection from me. But what I also
17 want to point out that if you are not finished with witnesses, I
18 don't want to go after five on a Friday. And we can certainly
19 accommodate you to finish up on Monday morning.

20 MR. LEDLIE: Your Honor, I have every confidence we'll
21 conclude all of the evidence tomorrow and just have Monday for
22 closings.

23 MR. MATTHEWS: We'll plan accordingly, Your Honor. I
24 think I heard you say you don't want to hear argument tomorrow.

25 THE COURT: No. I mean, I want to digest all of this

1 and I think it would be better for everybody concerned if we
2 came back bright eyed and bushy tailed on Monday morning awake
3 and refreshed from a weekend, rather than beaten to death after
4 two full days of testimony on a Friday afternoon.

5 If you had a jury, you wouldn't want them getting
6 arguments at 4:00 o'clock on a Friday. So, we'll see you
7 tomorrow morning at 9:00 o'clock. Thank you.

8 THE DEPUTY CLERK: All rise.

9 (Recess at 5:10 p.m.)

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CERTIFICATE OF COURT REPORTER

I, Linda C. Marshall, certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/

Linda C. Marshall, RPR
Official Court Reporter

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